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Comment

Suggested Changes in California Adoption Procedures

The adoption practice as it now exists in California was completely unknown at English common law and is purely statutory in origin.¹ The first adoption law of this state was enacted in 1870² and later superseded by provisions of the California Civil Code.

Today the principal provisions governing adoptions in California are found in Civil Code sections 221 to 230. These sections provide for the following types of adoption: (1) the adoption of an adult by an adult,³ (2) the adoption of a child by its step-parent,⁴ (3) the adoption of an illegitimate child by its natural father,⁵ (4) independent adoptions,⁶ and (5) agency adoptions.⁷

The problem of adoptions is fraught with discussion and conflict in the areas of independent and agency adoptions, which together account for approximately two-thirds of all completed adoptions in California.⁸ The procedures which govern these two important types of adoptions form the subject matter of the following discussion.

PRELIMINARY CONSIDERATIONS

The independent adoption is so named because the selection of the adopting parents and the placement of the child are made independent of an agency licensed by the Department of Social Welfare. However, before the petition for adoption is granted, one of the licensed agencies or the Department of Social Welfare must submit a report on the acceptability of the proposed adopting parents.⁹ This recommendation can be appealed from if unfavorable to the adopting parents and the court need not follow the recommendation of the Department of Social Welfare.¹⁰ If it feels that the welfare of the child will be promoted by the proposed adoption, the court may grant the petition without such consent.¹¹

¹ Estate of Pierce, 32 Cal.2d 265, 268; 196 P.2d 1, 3 (1948); Adoption of McDonnell, 77 Cal.App.2d 805, 809, 176 P.2d 778, 781 (1947); 21 HALSBURY, LAWS OF ENGLAND 220, 221 (3d ed. 1957).

² CAL. CIV. CODE §§ 226, 226b, 226c, 227.

³ CAL. CIV. CODE § 227p.

⁴ CAL. CIV. CODE § 227a.

⁵ CAL. CIV. CODE § 230.

⁶ CAL. CIV. CODE § 226.

⁷ CAL. CIV. CODE § 224m.

⁸ ADAMS, ADOPTION PRACTICE IN CALIFORNIA 2 (1956).

⁹ CAL. CIV. CODE § 226.

¹⁰ In re Adoption of D.S., 107 Cal.App.2d 211, 236 P.2d 821 (1951).

¹¹ In re Adoption of McDonald, 43 Cal.2d 447, 274 P.2d 860 (1954); In re Adoption of Curtis, 195 Cal.App.2d 179, 15 Cal.Rptr. 331 (1961).

The agency adoption, on the other hand, is one in which an agency licensed by the Department of Social Welfare to find homes and place children for adoption, joins in or is a party to a petition for adoption. In this type of adoption the natural parent or parents execute a relinquishment of the child to the agency. The agency then takes over the function of the parent in selecting a home and placing the child in the home of the prospective adoptive parents without calling on the natural parent or parents for consent to such placement.¹²

In an independent adoption, the placement of the child with the adoptive parents is in theory made only by the natural mother or the natural parents. As a practical matter, however, the placement often involves persons other than the natural parent or parents, such as relatives of the natural mother, physicians, or attorneys. In an agency adoption, the child is placed with a family that has already applied to the agency and has its tentative approval.¹³ After the child has been placed with the adopting parents, they file a petition for adoption with the superior court of the county in which the petitioners reside. If the petitioners have received the child from a licensed agency, the agency may join in the petition. This obviates the need for filing a report with the court approving of the adoption. If the agency does not join in the petition, however, it must file a report approving or disapproving of the adoption.¹⁴

In the agency adoption proceedings, furthermore, the licensed agency has interviewed the adopting parents and has found them to be tentatively acceptable prior to the placement of the child. However, in the independent adoption, the first notice the state receives of the proposed adoption is the filing of the petition of the adopting parents. Thus, in the former case, the adopting parents are conditionally approved prior to placement of the child; in the latter situation, they are not. The goal sought by the adoption statutes is to provide the legal means of assuring the court that the child is a proper subject for adoption and that the proposed home is a suitable one for him.¹⁵

THE PROBLEM

At the present time there are approximately twice as many independent adoptions as agency adoptions granted by the superior court each year.¹⁶ Fifteen years ago approximately 1800 adoptions per year were completed in California, being almost evenly divided among direct, agency, and step-parent adoptions.¹⁷

¹² CAL. CIV. CODE §§ 224, 224m.

¹³ CAL. CIV. CODE § 226.

¹⁴ CAL. CIV. CODE § 226.

¹⁵ *In re Santo's Estates*, 185 Cal. 127, 195 Pac. 1055 (1921).

¹⁶ ADAMS, *op. cit. supra* note 8, at 2.

¹⁷ *Id.* at 2.

In the next five years the total number per year increased from 1800 to 6000, and in 1955 a total of 9300 adoptions were initiated in California. Of these, approximately 3200 were step-parent adoptions, while slightly more than 6000 were new placements. Of the 6000 new placements, 4137 were direct adoptions and 1945 were agency placements. Thus 68 per cent were independent and 32 per cent were agency adoptions.¹⁸

In view of the above statistics, it will be seen that the independent adoption procedure fills a desirable social need. It offers to the parties an opportunity to participate more fully in the destiny of a young child through specific decisions as to its future environment. Certainly it places the added burden on both the natural parent and the adopting parent of making up his own mind about the acceptability of the other party; and, further, it carries with it the burden of deciding whether it is for the ultimate best interests of the child that the parties on each side should meet one another. These burdens, however, are balanced by the following considerations and characteristics: (1) the sense of participation and decision in the ultimate disposition of one's child; (2) the feeling of assurance before the child is born that a specific couple is ready, willing, and anxious to offer the child a permanent home immediately on discharge from the hospital; and (3) the knowledge that the entire proceeding will be completed within six months.¹⁹ Nevertheless it is suggested that certain changes in the independent adoption procedure should be made in order to correct some of the problems that now exist.

Under the agency adoption procedure, it is contended that the screening or processing of the application of the adopting parents prior to placement of the child with them prevents the placement of a child with adopting parents who would not be acceptable to the Department of Social Welfare. Under the independent adoption procedure, however, a child may be placed in a home which would prove unacceptable to the Department of Social Welfare. This argument, though appropriate in many cases is not wholly valid, for the Department of Social Welfare or the county adoption agency may investigate the home prior to the court's granting the petition. A report of its findings and a recommendation may be submitted for use by the court in its determination whether to grant or deny the petition.²⁰

The strongest arguments in favor of agency adoptions to the exclusion of independent adoptions are first, that lawyers or doctors are not trained to make the social investigation which the code requires as a prerequisite to granting

¹⁸ *Id.* at 2-3.

¹⁹ CAL. CIV. CODE § 226; ADAMS, *op. cit. supra* note 8, at 2.

²⁰ *In re Adoption of McDonald*, 43 Cal.2d 447, 274 P.2d 860 (1954); *In re Adoption of Curtis*, 195 Cal.App.2d 179, 15 Cal.Rptr. 331 (1961).

the petition; and secondly, the possibility of intervention by the natural parents in the lives of the adopted child and his adoptive parents is eliminated.

SUGGESTED CHANGES

The desire of natural parents to participate in and control to some extent the placement of the child appears to militate against abolition of the independent adoption procedure. It is suggested that to comply more fully with the spirit of the adoption law, independent adoption provisions should be subjected to certain legislative changes as indicated below.

First, a procedure for pre-placement investigation of the proposed adopting parents should be established to insure that they are acceptable to the Department of Social Welfare. The placement of a child in an unapproved home in an independent adoption would thus be prevented. The social worker for the Department of Social Welfare would determine whether or not the child was a proper subject for adoption, with an unfavorable finding appealable to the superior court by the prospective parents.

Second, since it would appear that the friction and competition which has developed between the legal, medical, and social welfare professions is not beneficial to society in general and to the field of adoptions in particular, California Civil Code section 224q should be amended to provide that the natural parent may act through her designated agent in the placement of her child in an independent adoption, subject of course, to appropriate regulations necessary to prevent the creation of a so-called "baby brokerage business." This amendment should specifically permit lawyers and physicians to assist in the placement of children. The present section, which provides that any person other than a natural parent or licensed agency who places a child for adoption is guilty of a misdemeanor, has caused a great deal of concern in the legal and medical professions.

Third, under the agency adoption procedure complete anonymity of the adopting parents is assured. In an independent adoption, under the present law, it is not possible to maintain the anonymity of the natural and adopting parents. This is a direct result of the interpretation of Civil Code section 224q, which authorizes only the natural parent to place the child with the adopting parents. The Attorney General of the State of California has specifically stated that this section, as written, precludes an agent of the parent from finding homes for children for adoption.²¹ The inability to maintain anonymity results in a prolonged period of anxiety for both the natural and adoptive parents. Anonymity is as desirable in an independent adoption as it is in an agency adoption, and the means of accomplishing this should be provided.

²¹ 23 OPS. CAL. ATT'Y GEN. 35 (1953).

CONCLUSION

The causes of the friction in the adoption field could be greatly reduced by a concerted cooperative effort by the legal and medical professions and the Department of Social Welfare.

Independent adoptions fill a desirable and necessary social need, and the procedure should function in the same manner as agency adoptions. They should not be clouded as they now are under the wording and interpretation of Civil Code section 224q.

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