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NOTES

Domestic Relations

ADOPTION: ANNULMENT OF STATUS

While the modern adoption statutes have proved to be a long step forward from the almshouses of the 19th century and their predecessor, the indenture system of the 1700's, the status of adoption has brought its own legal and social problems. One of these problems, the annulment or abrogation of an adoption where the status has proven unsatisfactory, especially for the adopting parents, will be the subject of this article.

In 1945, after six years of childless marriage, Mr. and Mrs. R. arranged through the state department of public welfare to adopt a child. They chose a pretty little three year old girl, the product of a broken home. While the records of the department of public welfare showed that the child had evidenced "some maladjustment" while in the welfare institution, none of this information was furnished to the adopting parents. Within one year after the adoption, the first of three natural children were born to the R's.

The little adopted girl had proven to be twice the rearing "problem" that any of their natural children had, but the R's had not considered the situation unnatural, attributing their difficulties to the fact that she had not entered their home until she was three years old. A 1952 incident involving a sex offense between their adopted daughter and a city park attendant was the first real intimation which they had that something might be amiss. Close observation following this incident revealed that she had attempted on numerous occasions to carry on sexual acts with the other R. children. Consultation with the family physician, followed by visits to two psychiatrists recommended by him, revealed that the child suffered an affliction known as juvenile paradoxia.¹ The medical men advised the R's that the condition was not known to respond to any treatment, but required close observation and trained handling. The family physician pointed out that the transition into her teens would only aggravate the condition and predicted a future full of heartaches and possibly worse unless the girl was removed from their home and placed under the supervision of an institution:

Two months of extensive investigation into the costs of institutional training revealed that the R's budget was not adequate to provide what the girl needed. Their next step was a visit to the public welfare depart-

¹ This condition is described in HERZOG, *MEDICAL JURISPRUDENCE* § 806 (1931) as the exhibition of sexual excitement at a period of life when, on account of the age of the individual, it is not yet to be expected. He attributes its cause to an urge originating in the brain and concludes that such children are a great problem, because wherever they may be they will corrupt other children.

ment which had arranged the adoption. There they were informed that the department would arrange for care and treatment, but that the costs must be borne by the R's. The department would not consider any abrogation of the adoption status. It was at this point that the R's brought their problem to an attorney. They wanted an annulment of the adoption, including a cancellation of the change of name whereby the girl had acquired their family name and that of their other children.

I

The fundamental problem in this field is whether it is possible to annul or set aside an adoption. In a number of adoption statutes there is included a provision to the effect that the status of the parties following a decree of adoption shall be the same as that of natural parents and child.² The relationship of natural parent and child could never be absolved by the courts.³ Regardless of the problems which may arise, there is no recognized legal basis upon which the relationship of natural parent and child can be terminated.

At the same time, the courts have frequently stated that adoption is a "status" created by order or decree;⁴ a statutory arrangement unknown to the common law.⁵ Under the principle that what the court has created through its order, it can also put asunder,⁶ there would seem to be legal basis for setting aside adoption orders. As stated by a lower Pennsylvania court:⁷

In the absence of a statutory provision placing a decree of adoption on a different footing than other judgments, there is nothing in the nature of such a decree to take away from the court granting it the power to revoke or annul it. [Citations omitted]. Pennsylvania has no statutory provisions on this subject.⁸

The vast majority of jurisdictions have adopted the view, either by statute or decision, that an adoption order can be annulled. Sixteen states

² *E.g.*, IND. ANN. STAT. § 3-122 (Burns 1933); VA. CODE § 63-357 (1950).

³ *In re Anonymous*, 157 Misc. 951, 285 N.Y.Supp. 827, 828 (Surr. Ct. 1936).

⁴ *Sheffield v. Franklin*, 151 Ala. 492, 44 So. 373 (1907); *In re Ziegler*, 82 Misc. 346, 143 N.Y.Supp. 562 (Surr. Ct. 1913).

⁵ *Green v. Paul*, 212 La. 337, 31 So.2d 819 (1947); *In re Pierro*, 173 Misc. 123, 17 N.Y.S.2d 233 (Surr. Ct. 1940).

⁶ "The power of this court to control its own decrees, to reopen, set aside, or modify, even after enrollment, is as ancient as the court itself, and has long been recognized." *Young v. Weber*, 117 N.J. Eq. 242, 175 Atl. 273, 276 (Ch. 1934).

⁷ *McKenzie's Adoption*, 44 Pa. D. & C. 86, 87 (Orphans Ct. 1937).

⁸ Apparently, this has not always been the uniform rule in Pennsylvania. The following quotation is to be found in *In re Souers*, 135 Misc. 521, 238 N.Y. Supp. 738 (Surr. Ct. 1930), at page 740: "In Pennsylvania it was held that, as the adoption statute contained no provision for a rescission of the contract of adoption, it could not be revoked at the instance of the foster parents, while the child was still a minor, for the child could not consent to a rescission of the contract, nor could any one else waive his rights for him. *In re Theil*, 14 Weekly Notes Cas. (Pa.) 422."

provide statutory grounds upon which annulment can be granted.⁹ An additional five states, although they provide no specific grounds upon which an order of adoption can be set aside, recognize the procedure of annulment by statutes providing for the recording of such decrees.¹⁰

There are only four states which appear to have taken the position that an adoption cannot be annulled or set aside. In Wisconsin there is a statute which provides:¹¹

In adoption proceedings failure to comply with the essential requirements of this chapter shall be ground for annulment of the order of adoption within 2 years after date of entry thereof. Except as provided in subsection (2), an order for adoption made by a court of this state which had jurisdiction of the parties and of the subject matter shall be conclusive and binding on all persons and in all proceedings after 2 years from the date of entry thereof. . . .¹²

Michigan is the second state which seems to have taken a stand against annulment of adoptions. In a 1945 case, the supreme court of that state observed:¹³

Except that there may be a rehearing within the statutory 90 days after the order of adoption may be made [Citation omitted], there is no provision in the law of this State for revocation of adoption proceedings.

The court cites, apparently with approval, an opinion of a former attorney general of the state to the effect that: "In my opinion the probate court would have no legal authority to vacate or annul any order of adoption of a minor child made in pursuance of section 8780. . . ." An earlier Michigan decision¹⁴ contained dictum to the effect that an attempt by the adoptive and natural parents to have an order of adoption set aside by a probate court, although the court granted the petition, "probably was unauthorized by law. . . ."

⁹ Alabama, Arkansas, California, Delaware, Georgia, Iowa, Kentucky, Maine, Minnesota, Missouri, Nevada, New York, South Carolina, Utah, Virginia, and Washington. The content and provisions of these statutes are discussed later in this article.

¹⁰ LA. REV. STAT. ANNOTATIONS § 40:203 (1950); MONT. REV. CODES ANN. § 69-536 (1947); TENN. CODE ANN. § 5827.45c (Williams Supp. 1951); TEX. REV. CIV. STAT. ANN. art. 4477, Rule 47a (1948); WYO. COMP. STAT. ANN. § 63-612 (1945). The Louisiana statute is typical. Its provisions read in part: ". . . the clerk of the court shall prepare, within ten days after the decree becomes final, from the court records, a certificate of every decree of annulment of adoption on forms furnished by the state registrar."

¹¹ WIS. STAT. § 322.09(1) (1951).

¹² An earlier Wisconsin decision contained dictum which suggests that, upon a showing of sufficient reason, an adoption might be set aside. "It may well be that . . . a finding that the best interests of the child would be promoted by transferring her custody from the adoptive parents to her natural parents, should be sustained." *In re MacCormick*, 178 Wis. 408, 190 N.W. 108, 109 (1922). It is to be noted however that the court here speaks of "custody," and if the word is used in its technical legal sense, may have referred to something other than an abrogation of the adoption status.

¹³ *In re Bell's Estate*, 310 Mich. 394, 17 N.W.2d 227, 228 (1945).

¹⁴ *In re Session's Estate*, 70 Mich. 297, 38 N.W. 249, 253 (1888).

A recent Ohio decision appears to place that state in the ranks of the jurisdictions which will not grant an annulment of adoptions. The case did not involve an application by the adoptive parents, and consequently the following statement by the court must be regarded as dictum: ¹⁵

In Ohio only minor children may be adopted, but as a result of a decree of adoption the child, to all intents and purposes, is the child of the adopter. No revocation of the adoption may be made by the adopting parent.¹⁶

Tennessee is the fourth state which has spoken out against adoption abrogations. In the case of *Coonradt v. Sailors*, the court said: ¹⁷

Where one voluntarily assumes the relationship of parent to a child by formal adoption, it cannot be lightly cast aside. The relationship involves duties of care, maintenance and education . . . and we think the Legislature alone should supply the procedure to be followed, as well as define the cause, if any, whereby the relationship may be dissolved. In the absence of such a statute the courts will not assume jurisdiction to annul a decree of adoption at the instance of the adopting parent and cast the child adrift to again become a public charge.

. . .

Such a proceeding is not authorized by any statute in this State and no court has any inherent jurisdiction to enter such an order.¹⁸

II

Where annulment or abrogation is permitted, there must be weighty and well established grounds therefor. "Courts should not annul the relation for slight cause on either side, nor should they deal with such severity as to deter good people from taking up the beneficent task the relation implies."¹⁹

Mere dissatisfaction with the arrangement, and/or a desire to terminate it, has been said to be insufficient to warrant setting aside an adoption status, even though the creation of the status was a voluntary act on the part of the adoptive parents. As stated by one court: ²⁰

We cannot concur with appellant in the view that the declarant having voluntarily, of his own "desire," entered into the relation of parent and child, his wish or "desire" to annul the relation is "good cause" for so doing. The statute recognizes legal duties growing out of the adoption, the rights and duties of the most intimate and vital of human institution, the family.

¹⁵ *Kirschman v. Paulin*, 155 Ohio St. 137, 98 N.E.2d 26, 29 (1951).

¹⁶ At one time Ohio had a statute similar to those mentioned above (See note 9 *supra* and accompanying text) providing grounds upon which an adoption might be annulled. OHIO GEN. CODE ANN. § 10512-21 (1938). This statute was repealed in 1944, Laws of Ohio 1943-44, No. 120, p. 441.

¹⁷ 186 Tenn. 294, 209 S.W.2d 859, 861 (1948).

¹⁸ It should be noted that Tennessee is one of the five states mentioned previously (See note 10 *supra* and accompanying text) that has statutory procedure for the recording of adoption annulments, although no grounds are prescribed. This statute was enacted in 1945 and was apparently in effect at the time of the *Coonradt* decision.

¹⁹ *Buttrey v. West*, 212 Ala. 321, 102 So. 456, 459 (1924).

²⁰ *Ibid.*

There is a dictum in the case of *In re MacCormick*²¹ to the effect that ". . . mere change in the circumstances of the parties affords no legal justification for setting aside the solemn judgment of the court." In another dictum the agreement of the natural parent or parents, or even their desire, to resume custody of the child has been rejected as sufficient grounds, in the absence of a statute authorizing such a procedure.²²

The majority of jurisdictions have refused to permit the adopting parent, or parents, to secure a revocation of the adoption on the grounds of technical errors in the original proceeding. The most frequent reason stated for this rule is that these parties, having sought the aid of the court in accomplishing the adoption, are estopped from later questioning or attacking its validity. As stated by the court in *Parsons v. Parsons*:²³

. . . and after the lapse of many years, during which time the status of the subject of adoption has been recognized as legally fixed by the judgment of the county court, by all parties to the proceedings, one of those parties on whose motion the judgment was rendered is in no position to appeal to the equity powers of the court to declare it void. The plainest principles of estoppel apply to the situation. Appellant petitioned for the judgment. It was entered on her motion. The person most interested, the child, was a ward of the court, and its status for life was entirely and irrevocably changed by the result of the proceedings if they were valid. Their validity was recognized by the appellant till she became pecuniarily interested in changing her position. Clearly, she cannot be aided by a court of equity to do that to the injury of the person she was instrumental in locating in her family as her adopted son.

The petitioner in this case had sought to have the adoption annulled, eleven years after the entry of the decree, on the grounds that she did not know what she was doing when she signed the adoption papers together with her husband, who had since died, leaving the adopted son as his heir.

A New York court refused the petition of an adoptive father for an annulment of the adoption when the grounds presented were that the consent of the natural father, which the petitioner had presented to the court in the original proceeding, was defective. Estoppel was the basis for the decision.²⁴ A large number of courts have stated the same proposition as dictum in cases involving heirs.²⁵

Adoptive parents have not always been estopped to raise questions regarding the original proceedings. In a Wisconsin case in 1929,²⁶ the

²¹ 178 Wis. 408, 190 N.W. 108, 110 (1922).

²² *Coonrad v. Sailors*, 186 Tenn. 294, 209 S.W.2d 859, 863 (1948).

²³ 101 Wis. 76, 83, 77 N.W. 147, 149 (1898).

²⁴ *In re Martin's Adoption*, 269 App. Div. 437, 56 N.Y.S.2d 95 (2d Dep't 1945).

²⁵ *E.g.*, *In re McKeag's Estate*, 141 Cal. 403, 74 Pac. 1039, 1041 (1903); *Harper v. Lindsey*, 162 Ga. 44, 132 S.E. 639, 642 (1926); *Greene v. Fitzpatrick*, 220 Ky. 590, 295 S.W. 896, 899 (1927), *aff'd sub. nom.*, *Greene's Adm'r v. Fitzpatrick*, 228 Ky. 850, 16 S.W.2d 477 (1929); *Nugent v. Powell*, 4 Wyo. 173, 33 Pac. 23, 30 (1893).

²⁶ *In re Mathews' Will*, 198 Wis. 128, 223 N.W. 434, 436 (1929).

court permitted the adoptive father to show that in the original proceeding no proper showing had been made that the child had been abandoned, and thus to defeat the child's status as an heir of the deceased mother. No mention was made of the *Parsons* decision.²⁷

Adoptive parents were refused an annulment of the status on alleged grounds of misconduct of the "child", in a case where the child had attained majority and married, apparently against their wishes.²⁸

Misconduct of the child has had a questionable career as grounds for annulment of adoption. New York prescribes this as a statutory ground.²⁹ In Alabama, where the statutory grounds do not include misconduct, an adoptive parent sought to have the decree set aside for the reason that: "Said child is disrespectful to petitioner. Said child is disobedient and incorrigible and recalcitrant to her father's wishes." The court's reaction to the petition is worthy of note:³⁰

First, "disobedient." One of the highest tasks, assumed by the parent, is to train the child to obedience. Obedience to parental authority is a foundation for obedience to the laws of the state, and even the divine law. Second, "disrespectful." Under the normal conditions of family life, the respect of the child toward the parent depends upon the personality of the parent. Unless the attitude of the child is warped by a more dominant personality, respect normally comes from a little child where respect is due. Disrespect and disobedience, without more, is rather a confession of failure on the part of the parent than a grievance against the child. Third, "recalcitrant and incorrigible." These are severe terms. They import a condition of hopeless perversity. In dealing with these charges, we note this child has not arrived at that age when she is presumed to have such normal sense as to be responsible in law for wrongdoing. [The child was twelve years old at the time this petition was heard]. There are no averments showing unusual intelligence, nor development of the moral sense beyond the ordinary. The qualities complained of are those that parental control and daily influence are designed to avoid. We think in no case should the duties of a foster parent be annulled for these traits of character in the child, without full averments and proof that they are not due to any fault, neglect, or omission of duty by the parent. We think it safe to say, also, that these traits can furnish no good cause to annul the relation until it is averred and proven that the child has reached such maturity as to be responsible for crime.

²⁷ *Parsons v. Parsons*, 101 Wis. 76, 83, 77 N.W. 147 (1898). See note 23 *supra* and accompanying text.

²⁸ *In re Adoption of Eaton*, 280 App. Div. 147, 112 N.Y.S.2d 708 (3d Dep't 1952), *aff'd*, 305 N.Y. 162, 111 N.E.2d 431 (1953).

²⁹ N.Y. DOM. REL. LAW § 118. "A foster parent who in pursuance of this article or of any act repealed hereby shall have adopted a foster child from an authorized agency may apply to a judge or surrogate of the court in which the original adoption took place for the abrogation of such adoption because of the wilful desertion of such foster parent by such foster child or because of any misdemeanor or ill behavior of such child."

³⁰ *Buttrey v. West*, 212 Ala. 321, 102 So. 456, 459 (1924).

This case should be compared with that of *In re Anonymous*,³¹ a case involving an eleven year old girl. After describing the child's conduct,³² the court concluded: ³³

To continue the relationship would only strain it; affection is already lost; it will not return, but rather in its place will come dislike, repugnance, and ultimate hatred, all of which is against the interests of the child and the foster parents . . . due regard for the interests of both the child and such foster parents require that such adoption be abrogated. . . .

Annulment was denied in another New York case, in which the basis for the petition was apparently misconduct. The age of the child involved does not appear in the reported case, although it apparently had considerable influence on the court's decision. The opinion, in part, reads: ³⁴

If the word "misdemeanor," taken with its context, be construed to mean not a petty crime, but merely "misconduct" or "evil conduct," still ill behaviour of a serious character must be proved on the part of a child capable of appreciating its wrongdoing. The statute authorizes abrogation only when it is shown that "the child has violated his duty toward such foster parent." And "violation of duty" connotes moral obligation and mental conception, a failure to meet appreciated obligations. Something more than behaviour causing annoyance to the parents must be shown. Contumacious conduct based in violation, not merely in immaturity and incapability of self-restraint, must appear.

The adoptive status was abrogated in the case of a seventeen year old boy who had displayed an unnatural bent toward stealing coupled with an incorrigible attitude.³⁵ The reported case sets out the many efforts the adoptive parents expended in an effort to correct the situation, including changing residence, arranging for special schools, institutional training, etc. The straw which broke the camel's back and led to the petition of the foster parents was the theft of the family car accompanied by complete desertion. The court branded this career as "a continued course of committing misdemeanors and ill behavior such as justify this court in abrogating the adoption."

³¹ 157 Misc. 951, 285 N.Y.Supp. 827 (Surr. Ct. 1936).

³² *Id.*, 285 N.Y.Supp. at 828: ". . . from that time on the child grew disobedient and unruly; that she appeared before visitors scantily clad and made immodest exhibition of herself; that she exploded fire crackers indoors; threw stones at her foster mother and called her names; threw a glass of water at her on another occasion; lay down in the public highway whereon automobiles were travelling; stole pennies from a nearby newsstand and money from her foster mother; that she quarrels with and assaults other children, striking them and scratching them with glass and wire; that she started paper fires in the cellar of the house; cuts the bedding and clothing; flooded the bathroom; broke a chime clock on a visit to a friend; is generally destructive; refuses to learn her lessons; has been dismissed from school for bad conduct; will not heed reproof or correction and does not respond to kindness or suggestion."

³³ *Id.*, 285 N.Y.Supp. at 829.

³⁴ *In re Buss*, 234 App. Div. 299, 254 N.Y.Supp. 852, 853 (4th Dep't 1932).

³⁵ *In re Souers*, 135 Misc. 521, 238 N.Y.Supp. 738 (Surr. Ct. 1930).

There is a case described in a Note appearing in 2 A.L.R.2d 909 (1948), and cited there as *Re Sovanofsky*, 18 Lanc. L. Rev. (Pa.) 30 (1900), which involved the annulment of an adoptive status, partly on grounds of misconduct. The child is described as refusing to recognize the parental authority of the adoptive parents, disobeying their commands, displaying open dislikes for the parents and demonstrating a general unhappy state of mind. There were additional facts involved, however, which cannot be ignored as grounds to which the court may have given considerable weight. These include: sickness, mistake as to the child's status as an orphan and her age, and probably most important, the fact that the welfare agency was willing to take the child back.

III

Grounds are provided in numerous statutes for the annulment of adoptions. Perhaps the broadest of these are statutes which either generally, or in part, provide for abrogation upon "good cause shown," or "the welfare of the child." Such statutes are in effect in Delaware,³⁶ Georgia,³⁷ Maine,³⁸ Nevada,³⁹ South Carolina,⁴⁰ and Virginia.⁴¹ Washington⁴² has a similar provision but restricts its application to six months after the entering of the adoption decree.

The discovery of any permanent or serious disability in the child within five years is grounds for annulment in Iowa.⁴³ Incurable disease and/or psychosomatic or mental disturbance discovered within five years is provided for in the Arkansas statute.⁴⁴ Adoptions may be annulled in Alabama,⁴⁵ Arkansas,⁴⁶ California,⁴⁷ Georgia,⁴⁸ Iowa,⁴⁹ Minnesota,⁵⁰ Missouri⁵¹ and Utah⁵² within five years⁵³ of the original decree on the grounds that the child is feeble-minded or epileptic. These same states, with the exception of Missouri, list insanity as a statutory ground; and

³⁶ DEL. REV. CODE c. 88, § 3551.4 (1935).

³⁷ GA. CODE ANN. § 74-416 (Supp. 1951).

³⁸ ME. REV. STAT. c. 145, § 41 (1944).

³⁹ NEV. COMP. LAWS § 1065.07-8 (Supp. 1941).

⁴⁰ S.C. CODE § 15.1382 (1952).

⁴¹ VA. CODE § 63-362 (Supp. 1952).

⁴² WASH. REV. CODE § 26.32.130 (1951).

⁴³ IOWA CODE ANN. c. 600, § 600.7 (1950).

⁴⁴ ARK. STAT. ANN. § 56-110 (1947).

⁴⁵ ALA. CODE tit. 27, § 4 (1940).

⁴⁶ ARK. STAT. ANN. § 56-110 (1947).

⁴⁷ CAL. CIV. CODE § 227b (1949).

⁴⁸ GA. CODE ANN. § 74-416 (1941).

⁴⁹ IOWA CODE ANN. c.600, § 600.7 (1950).

⁵⁰ MINN. STAT. § 259.08 (1949).

⁵¹ MO. REV. STAT. § 453.130 (1949).

⁵² UTAH CODE ANN. § 78-30-13 (1953).

⁵³ The Georgia statute, note 48 *supra*, provides that the proceeding for annulment may be brought within seven, instead of five, years.

venereal disease is recognized as grounds for annulment in all but California. All of these statutes contain provisions that these infirmities in the child must be the result of conditions existing prior to the adoption and of which the adopting parents had no knowledge or notice.⁵⁴

As mentioned previously, misconduct or wilful desertion by the child is provided as a ground in New York.⁵⁵ Two states, Kentucky⁵⁶ and Missouri,⁵⁷ provide for the abrogation of an adoption upon discovery within five years that the racial ancestry of the child is different than that of the adopting parents.

Several cases, either in dicta or apparently as a necessary premise to a decision, have indicated that an adoption can be set aside for fraud in its procurement. A Colorado decision provides perhaps the clearest pronouncement in this regard.⁵⁸ The petitioner had married a widow with two children. He adopted the children, allegedly on the basis of her promise to care for them. Sometime later she divorced him, and he sought the aid of an equity court to annul the adoption as having been procured by her fraud in promising to care for the children which she had failed to do. The petition was filed five years after the granting of the original decree. The grant of a motion to strike his allegations in this regard was reversed by the court on the grounds that: ⁵⁹

. . . the judge who entered the adoption decree had a continuing jurisdiction and was the proper one to review or consider that judgment or decree when it was attacked upon the ground that it was entered as a result of fraud practiced upon one of the petitioners therein.

Dicta to the effect that an adoption can be set aside for fraud practiced on the adopting parents is to be found in *Eck v. Eck*⁶⁰ and *State ex rel. Bradshaw v. Probate Court of Marion County*.⁶¹ *Hunter v. Bradshaw*⁶² suggests that fraud is the only ground recognized in Indiana.

One case has held that a foster parent may bring an action to set aside an adoption on the grounds of his own ". . . (a) cruelty, (b) misusage,

⁵⁴ The Iowa statute is typical. "If within five years after the adoption, a child develops feeble-mindedness, epilepsy, insanity, or venereal infection or an otherwise permanent and serious disability as a result of conditions existing prior to the adoption, and of which the adopting parent had no knowledge or notice, a petition setting forth such facts may be filed with the district court of the county where the adoptive parents are residing. If upon hearing the facts alleged are proved, the court may annul the adoption and refer the child to the Juvenile Court or take such other action as the case may require. In every such proceeding it shall be the duty of the county attorney to represent the interests of the child." IOWA CODE ANN. c.600 § 600.7 (1950).

⁵⁵ See note 28 *supra* and accompanying text.

⁵⁶ KY. REV. STAT. ANN. § 199.540 (Baldwin Cum. Supp. 1953).

⁵⁷ MO. REV. STAT. § 453.130 (1949).

⁵⁸ *Kubat v. Kubat*, 124 Colo. 491, 238 P.2d 897 (1951).

⁵⁹ *Id.*, 238 P.2d at 899.

⁶⁰ 145 S.W.2d 231 (Tex. Civ. App. 1940).

⁶¹ 225 Ind. 268, 73 N.E.2d 769 (1947).

⁶² 209 Ind. 71, 198 N.E. 73 (1935).

(c) inability or refusal to support, maintain or educate such child, (d) an attempt to change, or the actual making of change of, or the failure to safeguard the religion of such child, or (e) any other violation of duty on the part of the foster parent or parents toward such child.”⁶³

IV

Some form of judicial proceeding is required for the abrogation or annulment of adoptive status. It cannot be accomplished by an act of the parties, even a notarized act.⁶⁴ Even in a jurisdiction where adoption could be accomplished at one time without judicial decree, by a deed of the adoptive parent, it was held that: “. . . when such relationship was so established, it could not be annulled, especially in the case of a minor, except by judicial proceeding brought for that purpose and showing equitable grounds.”⁶⁵

Judicial decisions and statutory provisions in this field all agree that the court which entered the original adoption decree is the proper place to file a petition for its abrogation.⁶⁶ The petition probably should be verified, some of the statutes specifically providing for verification.⁶⁷ Generally, the proceeding should be brought in the name of the adoptive parent or parents: one case has held that the statutory provisions for annulment could not be invoked by others.⁶⁸

Some of the statutes contain specific provisions for notice, summons, citation or order to show cause.⁶⁹ The parties indicated are usually, the department of public welfare or similar agency, and in some instances, the child. Even where not statutorily provided for, it would seem to be a wise policy to serve notice on the public welfare department of the county since, in the event the annulment is granted, this agency will become responsible thereafter for the care of the child. The interests of

⁶³ *In re Adoption of Anonymous*, 185 Misc. 962, 58 N.Y.S.2d 159 (Surr. Ct. 1945).

⁶⁴ *Succession of Thompson*, 221 La. 791, 60 So.2d 411 (1952).

⁶⁵ *Eck v. Eck*, 145 S.W.2d 231, 233 (Tex. Civ. App. 1940).

⁶⁶ *See e.g.*, CAL. CIV. CODE § 227b (1949); *Kubat v. Kubat*, 124 Colo. 491, 238 P.2d 897, 899 (1951).

⁶⁷ N.Y. DOM. REL. LAW § 118.

⁶⁸ *Mulligan v. Wingard*, 72 Ga. App. 539, 34 S.E.2d 305, 308 (1945). However, the statutes in Delaware, Maine, Virginia, and Washington provide that the proceeding may be brought by other affected parties. DEL. REV. CODE c. 88, § 3551.4 (1935); ME. REV. STAT. c.145, § 41 (1944); VA. CODE § 63-362 (Supp. 1952); WASH. REV. CODE § 26.32.130 (1951).

⁶⁹ “The application shall be made by a verified petition stating the grounds thereof. Thereupon a summons, citation or order to show cause shall be issued by such judge or surrogate directed to such child and to the authorized agency which was a party to such adoption or, if such agency does not then exist, to the board, commission or official charged with the jurisdiction of the poor of the county requiring them to show cause why such petition should not be granted.” N.Y. DOM. REL. LAW § 118.

the child should be represented in the proceeding, and a few of the statutes designate who shall perform this responsibility.⁷⁰

None of the decided cases appear to have passed on the question of the time limitation within which the action must be brought. Where a limit is established by statute, it is highly probable that the courts would require strict compliance. By analogy, it has repeatedly been pointed out that strict compliance with statutory requirements is essential to the validity of a proceeding to adopt.⁷¹ One New York case suggests that annulment or abrogation cannot be granted after the child attains maturity.⁷²

V

The effect of a decree of annulment is normally to return the child to the status it occupied prior to the adoption. The Virginia statute expressly provides for this result.⁷³ Any and all rights or obligations which may have accrued by reason of the adoption are terminated. These would include the right to inherit as an heir, and the responsibility for the support, education and care of the child. Since the change of name is generally included as a part of the original decree, the annulment of that decree would apparently restore the child to its original name. Some of the statutes so provide.⁷⁴ In some jurisdictions, the disposition of the child is left to the discretion of the court,⁷⁵ while in others, specific provision is made for its care and custody following an annulment of the adoptive status.⁷⁶

Only one decided case appears to have passed upon the effect of a decree of annulment. In that case, between the time of the original adoption and the granting of the decree of annulment, the adoptive mother had died. The principal issue in the case was whether the adopted child would take as an heir. The court held that the child's status as an adoptee

⁷⁰ CAL. CIV. CODE § 227b (1949) (State Department of Social Welfare); IOWA CODE ANN. c. 600 § 600.7 (1950) (county attorney); MINN. STAT. § 259.08 (1949) (county attorney); UTAH CODE ANN. § 78-30-13 (1953) (county attorney).

⁷¹ *Green v. Paul*, 212 La. 337, 31 So.2d 819, 821 (1947).

⁷² *In re Adoption of Eaton*, 280 App. Div. 147, 112 N.Y.S.2d 708 (3d Dep't 1952), *aff'd*, 305 N.Y. 162, 111 N.E.2d 431 (1953).

⁷³ ". . . the court shall vacate the final order of adoption and change the name, and thereupon such child shall be restored, to all intents and purposes, to the position and name which were his prior to the adoption. . . ." VA. CODE § 63-362 (Supp. 1952).

⁷⁴ DEL. REV. CODE c.88, § 3551.4 (1935); VA. CODE § 63-362 (Supp. 1952).

⁷⁵ ARK. STAT. ANN. § 56-110 (1947); N.Y. DOM. REL. LAW § 118; WASH. REV. CODE § 26.32.130 (1951).

⁷⁶ CAL. CIV. CODE § 227c (1949) (the county of adoption); IOWA CODE ANN. c.600, § 600.7 (1950) (Juvenile Court); MINN. STAT. § 259.08 (1949) (Director of Social Welfare); UTAH CODE ANN. § 78-30-13 (1953) (Juvenile Court and Probation Commission).

remained as such up until the date of the annulment, with all of the rights incidental thereto. An annulment decree has only prospective effect and is not a declaration of nullity in regard to the original proceeding.⁷⁷

Conclusion

One final aspect of the problem is the question whether adoptions *should* be set aside. In a Note appearing in the *Boston University Law Review* in 1936, the author, taking a stand generally against abrogation of adoptions, observed: ⁷⁸

In the first place, the child is adopted for a selfish purpose. By the adoption, a new status is created — that of parent and child. . . . If the status attained is what it purports to be, the parent should meet all situations with the same attitude of mind that he naturally would have, had the child been his by birth.

As pointed out by Harper,⁷⁹ however, what *should* be the attitude of an adoptive parent is not necessarily the one that he takes. There are several psychological problems which are frequently aggravated by the fact that the child is adopted. The lack of response on the part of the child may be quickly misinterpreted by a parent who considers that the child "is not hers, after all." The not unusual fear of hereditary traits is accentuated by the fact of unknown ancestry, and the parents' fear that an undesirable trait may be the result of "bad blood" can present a serious obstacle to their relation with it.

Courts have often reiterated that their main concern in cases where children are involved is the welfare of the child.⁸⁰ Only one court has apparently taken the stand that the interests of the adoptive parents should be given weight in deciding questions relating to adoption.⁸¹ The conclusion reached by the court in *In re Anonymous* appears to be the correct answer to the question of whether annulment should be permitted: ⁸²

To continue the relationship would only strain it; affection is already lost; it will not return, but rather in its place will come dislike, repugnance, and ultimate hatred, all of which is against the interest of the child and the foster parents. . . . Due regard for the interests of both the child and such foster parents require that such adoption be abrogated. . . .

⁷⁷ *Steiner v. Rainer*, 69 Ohio App. 6, 42 N.E.2d 684 (1941).

⁷⁸ 16 B.U.L. REV. 700, 704 (1936).

⁷⁹ HARPER, PROBLEMS OF THE FAMILY 480-1 (1952).

⁸⁰ "An analysis of the foregoing cases reveals that the primary consideration of the courts, in determining whether the adoption decree should be revoked, has been the welfare of the child. The decree was revoked where the child's interests were thereby advanced; otherwise it was permitted to stand." *McKenzie's Adoption*, 44 Pa. D. & C. 86, 88 (Orphans Ct. 1937).

⁸¹ *In re Souers*, 135 Misc. 521, 238 N.Y.Supp. 738, 742-3 (Surr. Ct. 1930).

⁸² 157 Misc. 951, 285 N.Y.Supp. 827, 829 (Surr. Ct. 1936).