**Steve Leimberg's Estate Planning Email Newsletter - Archive Message #2089**

**Date:** 16-Apr-13

**From:** Steve Leimberg's Estate Planning Newsletter

**Subject: Jeff Baskies on Goodman v. Goodman: Florida's 3rd District Court of Appeal Addresses Intriguing Adult Adoption Case, Was the Adoption of Goodman's Girlfriend a Bright Idea or Bad Public Policy?**

In a fascinating case based on sensational facts and circumstances, the Florida Third District Court of Appeals invalidated a "polo tycoon's" adoption of his adult girlfriend. The adoption was apparently motivated by a desire to gain access to an irrevocable trust or to continue a fight with the trustee of that trust.

As **Jeff Baskies** points out in his commentary, the key issue for planners is can a client adopt a girlfriend (or boyfriend) to gain economic benefit from an irrevocable trust or estate plan? Or, said differently: is adopting one's adult paramour to gain an advantage in a trust or estate a bright idea or violation of public policy?

Unfortunately, the Florida appellate court did not decide that issue, instead ruling on procedural grounds, but the case underlines an interesting (albeit odd) circumstance that may repeat itself in other cases. The public policy concerns surrounding such an adoption were highlighted in the concurring opinion and are worthy of consideration.

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Before we get to Jeff's commentary, members should note that a new **60 Second Planner** by **Bob Keebler** was just posted to the **LISI** homepage. In his commentary, Bob reviews the transfer tax provisions in the Obama Administration's Fiscal Year 2014 Budget Proposal. You don't need any special equipment - just click on this link.

Now, here is Jeff Baskies' commentary:

**EXECUTIVE SUMMARY:**

In 2011, "polo tycoon" John Goodman adopted his 42 year old girlfriend (Hutchins), ostensibly to (a) gain indirect access to the assets held in an irrevocable trust (Trust) he previously created

for the benefit of his “children” and/or (b) get a leg up in an apparently long-standing battle with his ex-wife and the trustee over the administration of the Trust.

By adopting Hutchins, Goodman had an ally who could benefit from the income and principal of the trust and provide a qualified beneficiary who could continue to pursue Goodman’s claims against the trustee.

Based on a “fraud on the court” theory, the Florida 3rd DCA voided the adoption sending the matter back to the trial court and instructing that the ex-wife and children must be noticed and allowed to intervene in the proceeding. However, the Florida 3rd DCA did not instruct the lower court as to how to weigh and balance the competing concerns once they do intervene. One can assume Goodman may continue to seek to adopt Hutchins, and the children may object on economic arguments asking the court not to permit it since doing so might reduce their trust benefits. But Goodman could have adopted minor children and diluted his other children’s share in that manner. So the mere act of diluting the interest of his existing children by itself does not seem to be a sufficient justification to deny the request for an adult adoption.

Only the concurring opinion gives an insight into the public policy concerns implicated by the underlying adult adoption case.

**FACTS:**

What makes this case so interesting and instructive are the background facts:

In February 2010, Goodman’s Bentley struck Scott Wilson’s Hyundai, pushing Wilson into a Wellington, FL canal, where he drowned. In March of 2012, after a trial, Goodman was convicted of DUI manslaughter with failure to render aid and vehicular homicide. In May of 2012, Goodman was sentenced to sixteen years in prison. The case is on appeal and was recently sent back to the trial court to consider allegations of juror misconduct.

In 1991, Goodman and his wife (at that time), Carroll Goodman, established an irrevocable trust for the benefit of Goodman’s children. Two children were born of Goodman’s marriage with Carroll (now his ex-wife); however, like many trusts, the trust agreement provided that all of Goodman’s “children” were to share equally in the trust principal and income.

Also in 2010, Goodman became involved in litigation in Delaware over the management of the trust’s assets.

In addition to the Delaware civil case and the Florida criminal case, Goodman was also sued by Wilson’s parents, on behalf of his estate in a Palm Beach County Circuit Civil case.

In the wrongful death case, Wilson’s parents attempted to introduce evidence that Goodman actually had access to the Trust assets in order to justify greater punitive damages.

During the pendency of the two civil cases, Goodman filed a petition in Miami-Dade County to adopt his girlfriend, Hutchins, without notice to his children, their guardian, or their mother. At the time, Goodman was 47 and Hutchins 42.

In October of 2011, the Miami-Dade County Court approved the adoption of Hutchins by Goodman. As a result, Hutchins became a one-third beneficiary of the Trust.

As an interesting aside, footnote and planning pointer, the court explained that Goodman and Hutchins also entered into an Adoption Agreement ("Agreement"), akin, I guess to a prenuptial agreement.

The Agreement provided that Hutchins would immediately receive a $5 million testamentary power of appointment, $3 million before the end of 2012, and continued distributions throughout her lifetime, valued at an estimated $8.75 million. The Agreement further provided that Hutchins could request additional annual amounts from the trust, to be determined at the sole discretion of Goodman's business agent, Andrew Toups. The Agreement contained no limitations or criteria for Hutchins' additional requests for funds.

Without reading a copy of the Trust, it is hard to ascertain what exactly this Agreement did or how the grantor of an irrevocable trust granted a "$5 million testamentary power of appointment", but it is interesting from a planning perspective.

In January 2012, after the period to appeal the adoption expired, Goodman notified the parties of the adoption. The guardian and former spouse moved to intervene and moved to set aside the adoption. The trial court refused to do so, but the Third District Court of Appeal voided the adoption claiming the failure to give notice was a "fraud on the court" and ordered the Appelants must be given an opportunity to have notice and hearing on the underlying adoption issues.

In the meantime, Goodman settled the wrongful death suit for a reported $46 million.

There's little doubt that under the circumstances, the adoption of his girlfriend to make her a beneficiary of an otherwise irrevocable trust was a clever idea. The question remains, however, if it was legal.

**COMMENT:**

The Third District Court of Appeal held that the failure to give notice of the adoption proceeding violated the due process rights of Goodman's other children. Thus, the opinion held that the denial of the motion to intervene was improper and that the judgment of adoption was void. The court sent the matter back to the trial court, without addressing how to weigh and balance the interests of the parties if the case is presented again.

Assuming the children are noticed and do appear and argue they have an economic interest in the adoption, is that reason enough to deny an adoption? If the adoptee were a minor in need of a

home, would a court deny an adoption because it diluted the natural children's share of a trust? Assuming the answer is no, then why is an adult adoption something a court should deny?

Chapter 63 of the Florida Statues addresses adoption and generally does not address any issues relating to adult adoptions. The statutes speak in great detail of the best interests of an adopted child, but say little about adopting an adult. However, the statutes do not forbid adult adoptions. In fact, §63.042(1) specifically says: "Any person, a minor or an adult, may be adopted."

Indeed the statutes express no public policy expressly for or against adult adoption other than the permissive provision of §63.042(1). If adult adoption was impermissible, the policy should be stated in the Act. Other public policies are stated in the Act. Rather embarrassingly, in reading the Florida Adoption Act, one finds that the only absolutely prohibited adoptions are by homosexuals. §63.042 states that "No person eligible to adopt under this statute may adopt if that person is a homosexual." This was determined to be unconstitutional in Florida Department of Children and Families v. Adoption of X.X.G. 45 So.3d 79 (Fla. 2010). The statutes go on in §63.0422 to state that adoption may not be denied to a person on the grounds that he owns firearms (apparently a protected class under Florida law). But again, there is no policy expressed in the statute about adult adoption.

And the majority's opinion in the Goodman case does not direct the trial court either.

Only the concurring opinion gives any indication of the fundamental public policy concerns implied in the majority's opinion, stating:

I entirely agree that the final judgment of adoption is a nullity. Even if the motivation and the means for securing it were not so reprehensible, I believe, as the New York Court of Appeals held in In re Adoption of Robert Paul P., 63 N.Y. 2d 233, 236 (1984), the adoption of a paramour is so contrary to the beneficent purposes of such an action that no such judgment can ever be sustained.

While not a statement of how Florida courts should rule, the decision of the Court of Appeals of the State of New York in the case of In re Adoption of Robert Paul P., 63 N.Y. 2d 233, 236 (1984), was more instructive as to the public policies behind adoptions and why courts may deny adult adoptions in particular. The court's ruling in that case put the public policy concerns at center stage:

While the adoption of an adult has long been permitted under the Domestic Relations Law, there is no exception made in such adoptions to the expressed purpose of legally formalizing a parent-child relationship…..

Here, where the appellants are living together in a homosexual relationship and where no incidents of a parent-child relationship are evidenced or even remotely within the parties' intentions, no fair interpretation of our adoption laws can permit a granting of the petition.

Adoption is not a means of obtaining a legal status for a nonmarital sexual relationship — whether homosexual or heterosexual. Such would be a "cynical distortion of the function of adoption." (Matter of Adult Anonymous II, 88 A.D.2d 30, 38 [Sullivan, J. P., dissenting].) Nor is it a procedure by which to legitimize an emotional attachment, however sincere, but wholly devoid of the filial relationship that is fundamental to the concept of adoption.

While there are no special restrictions on adult adoptions under the provisions of the Domestic Relations Law, the Legislature could not have intended that the statute be employed "to arrive at an unreasonable or absurd result." (Williams v Williams, 23 N.Y.2d 592, 599.) Such would be the result if the Domestic Relations Law were interpreted to permit one lover, homosexual or heterosexual, to adopt the other and enjoy the sanction of the law on their feigned union as parent and child.

There are many reasons why one adult might wish to adopt another that would be entirely consistent with the basic nature of adoption, including the following: a childless individual might wish to perpetuate a family name; two individuals might develop a strong filial affection for one another; a stepparent might wish to adopt the spouse's adult children; or adoption may have been forgone, for whatever reason, at an earlier date. (See Wadlington, Adoption of Adults: A Family Law Anomaly, 54 Cornell L Rev 566, at p 571, n 26, and p 578.) But where the relationship between the adult parties is utterly incompatible with the creation of a parent-child relationship between them, the adoption process is certainly not the proper vehicle by which to formalize their partnership in the eyes of the law. Indeed, it would be unreasonable and disingenuous for us to attribute a contrary intent to the Legislature.

If the adoption laws are to be changed so as to permit sexual lovers, homosexual or heterosexual, to adopt one another for the purpose of giving a nonmatrimonial legal status to their relationship, or if a separate institution is to be established for the same purpose, it is for the Legislature, as a matter of State public policy, to do so. Absent any such recognition of that relationship coming from the Legislature, however, the courts ought not to create the same under the rubric of adoption.

The dissent also made a persuasive argument:

What leads to the majority's conclusion that the relationship of the parties "is utterly incompatible with the creation of a parent-child relationship between them" is that it involves a "nonmarital sexual relationship." But nothing in the statute requires an inquiry into or evaluation of the sexual habits of the parties to an adult adoption or the nature of the current relationship between them. It is enough that they are two adults who freely desire the legal status of parent and child. The more particularly is this so in light of the absence from the statute of any requirement that the adoptor be older than the adoptee, for that, if nothing else, belies the majority's concept that adoption under New York statute imitates nature, inexorably and in every last detail.

Under the statute "the relationship of parent and child, with all the personal and property rights incident to it, may be established, independently of blood ties, by operation of law" (Matter of Malpica-Orsini, supra); existence of a parent-child relationship is not a condition of, but a result of, adoption. The motives which prompt the present application are in no way contrary to public policy; in the words of Mr. Justice Holmes, they are "perfectly proper" (Collamore v Learned, 171 Mass 99, 100). Absent any contravention of public policy, we should be "concerned only with the clear, unqualified statutory authorization of adoption" (Bedinger v Graybill's Executor, 302 SW2d 594, 599 [Ky]; Matter of Berston, 296 Minn 24, 27) and should, therefore, reverse the Appellate Division's order.

As you can see, the public policy concerns were addressed much more definitively by the Court of Appeals for New York State in both the majority and dissenting opinions. It will be interesting and informative to see if the Florida courts (if the Goodman case is in fact reheard) address the public policy debate and adopt either the majority or dissenting opinion from In re Adoption of Robert Paul P or if the Florida courts will come up with a fundamentally different holding.

**Conclusion**

For those practicing in the trusts and estates world, the issue of adult adoption may not come up frequently. However, as noted, there are circumstances where the issue will come up and they seem to be in the area of our practice. One person may wish to adopt a paramour for the sake of benefits otherwise restricted in trusts and estate plans. The relationships may be heterosexual (as in the Goodman case) or homosexual (as in the Robert Paul P case), but in either event, adoption of a lover may be the only way to gain access to a trust benefit.

Thus, if the issue of adult adoption does arise, it may well be in the context of an estate planning issue, and therefore, trust and estate advisors should be aware that as clever as it may seem, such adult adoptions may be construed to violate state public policy and may thus be void.

**HOPE THIS HELPS YOU HELP OTHERS MAKE A POSITIVE DIFFERENCE!**

***Jeffrey A. Baskies***

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