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COMPARATIVE ADOPTION APPROACHES OF MISSOURI AND KANSAS: TERMINATION OF PARENTAL RIGHTS AND EQUITABLE ADOPTIONS

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At the very least, there is one thing that unifies the states on their adoption policies: it is encouraged. The battles are in the details. Kansas and Missouri are wonderful examples of how two states can differ in their adoption policies, albeit having similar geographic and demographic make-ups. This note will discuss two key differences between Missouri and Kansas adoption laws: (1) the termination of parental rights during an adoption and (2) the use of equitable adoptions. The purpose of this note is to show that, arguably, Missouri has a better approach to the analysis of terminating parental rights; however, in regards to equitable adoption, Kansas has a more plausible argument against equitable adoption.

Generally speaking, while adoption is encouraged in all states, the United States Constitution does not provide a federal constitutional right to adoption.¹ However, there is a constitutional right to parenting and the right to make decisions for one's family.² In *Troxel v. Granville*, the United States Supreme Court held that "the Due Process Clause does not permit a state to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better' decision could be made."³ As such, adoption procedures can directly interfere with a parent's constitutional rights. Therefore, when it comes to adoptions, many states require that adoption statutes be strictly construed in order to tread carefully when determining whether to end a parent's parental rights.⁴

I. TERMINATION OF PARENTAL RIGHTS: MISSOURI VS. KANSAS

When an adoption is completed, two distinct things happen: (1) a person's right as a parent is terminated and (2) the legal custody of the child is

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¹ 1 LINDA D. ELROD & JAMES P. BUCHELE, KANSAS LAW & PRACTICE, FAMILY LAW § 6:1 (2014).

² *Troxel v. Granville*, 530 U.S. 57, 72 (2000).

³ *Id.*

⁴ See ELROD & BUCHELE, *supra* note 1.

transferred, which creates legal rights in the new adoptive parents.⁵ States have a specific interest in protecting the interest of the parent and the child; therefore, only the state should be able to make a final analysis of when a parent and child's relationship should end.⁶ Therefore, states have gone to great lengths to provide safeguards through statutory guidelines.

A. Missouri

In Missouri, to determine whether a parent's rights should be terminated, courts analyze the "best interests of the child."⁷ It is important to note that adoption and parenting right is such a hot topic that this area of the law is always expanding and changing as the legislator adopts new language and procedures.⁸ Currently, the law does not require the adoption consent of the following parties: (1) a parent's whose rights have been terminated pursuant to the law; (2) a parent who consented to a future adoption of the child; (3) a parent whose identity is unknown and cannot be ascertained; (4) a man who has not established to be the father and who executes an irrevocable verified statement denying paternity and disclaiming any interest in the child; (5) a parent or other person, who after proper service fails to answer or appear in proceedings for the adoption or termination of parental rights; (6) a parent who has mental conditions which "renders the parent unable to knowingly provide the child the necessary care;" and (7) a parent who has "willfully abandoned the child."⁹ What is unique about Missouri's termination laws is that regardless of whether the adoption is contested or not, there is a six-month grace period before the court will grant an adoption petition and ultimately sever the natural parent's right to the child.¹⁰ The adoption petitioner has to have had lawful and actual custody for a period of at least six months prior to the entry of the adoption decree.¹¹ The courts also require a six-month grace period before determining that the parent abandoned or neglected the child and thus, terminating his or her parental right.¹² In other words, Missouri has created a built-in procedural grace period to ensure that all parties come to terms with the magnitude of the adoption process and with the long-term results. Mandatory grace periods are a great way to provide streamlined safeguards for all parties to understand their rights and responsibilities in the process.

B. Kansas

⁵ ELROD & BUCHELE, *supra* note 1.

⁶ 21 JACK COCHRAN & NANCY A. GARRIS, MISSOURI PRACTICE SERIES, FAMILY LAW § 17:2 (3d ed. 2014) (as outlined by the Missouri statutes, Missouri has implemented safeguards and checks before terminating a parent's right to ensure that a parent makes an informed decision with built in time to think about his or her options).

⁷ MO. REV. STAT. § 211.447(6) (2014).

⁸ As of the time of this article, there is proposed legislation in the Missouri Senate and House of Representatives, including: 2015 MO S.B. 425; 2015 MO H.B. 182, 2015 MO H.B. 182, 2014 MO S.B. 990, 2014 MO S.B. 943, and 2014 MO H.B. 1252.

⁹ MO. REV. STAT. § 453.040 (2014).

¹⁰ *See* MO. REV. STAT. § 453.080 (2014).

¹¹ *Id.*

¹² MO. REV. STAT. § 453.040 (2014).

Kansas does not have an extended grace period requirement like Missouri. In Kansas, if a parent signs a relinquishment to an agency, for example, the person's parental rights are terminated upon acceptance by the agency, and the parents are not entitled to further notice regarding the adoption.¹³ However, notably, Kansas courts still have full discretion to determine whether the adoption should in fact be granted.¹⁴ Thus, Kansas courts act as the final arbitrators in actually granting an adoption. Kansas Court of Appeals has held "we recognize that regardless of the personal desires and expressed wishes of the natural parents, it is the court which in the final analysis must make a judgment as to whether any proposed adoption is to be allowed."¹⁵ The court provides safeguards through their analysis of the adoption to make sure that the consent was truly voluntary and that the adoption is in the best interest of the child. Kansas Courts have emphasized that parenting rights "cannot be abrogated except under compelling circumstances" because parent's constitutional rights require the highest protection.¹⁶

Even though Kansas does not have a six-month grace period requirement before an adoption can be finalized (like in Missouri), there are still some time-restrained imposed by statute. Kansas allows the birth mother to sign a consent form only after twelve hours has passed from the time of birth.¹⁷ Otherwise, the consent is considered voidable.¹⁸ There have been a number of cases challenging the constitutionality of the twelve-hour wait period for a parent to relinquish his or her right in Kansas.¹⁹ However, the Kansas Court of Appeals has held that the 12-hour mandate is constitutional because it supports public concern of statutorily protecting parents and children relationships.²⁰

In cases of involuntary termination of parental rights, Kansas courts determine whether the parent was unfit to care for the minor child by analyzing the "totality of the circumstances" of the parent's role in the child's life.²¹ Prior to 2011, Kansas used a "two-column ledger" approach in making the determination of unfitness.²² Even though the Kansas courts have abrogated the use of the two-ledger approach in a 2011 decision and replaced it with a totality of circumstances approach,²³ in comparison to Missouri analysis, the Kansas legislature should consider returning to the two-ledger approach.

Under the two-ledger approach, someone petitioning for an adoption has to show that the natural parent failed to: (1) demonstrate love and affection toward the child by failing to visit, contact, communicate with, or make contributions to the child and (2) substantially support the child by failing to

¹³ ELROD & BUCHELE, *supra* note 1, § 6:4.

¹⁴ See *In re Adoption of Baby Girl Chance*, 609 P.2d 232 (Kan. Ct. App. 1980).

¹⁵ *Id.* at 239.

¹⁶ ELROD & BUCHELE, *supra* note 1.

¹⁷ *Id.* at § 6:11.

¹⁸ *Id.*

¹⁹ See generally *In re Adoption of Baby Girl T*, 21 P.3d 581 (Kan. Ct. App. 2001); *In re Adoption of Baby Girl W*, 43 P.3d 902 (Kan. Ct. App. 2002).

²⁰ ELROD & BUCHELE, *supra* note 1, § 6:11 (citing *In re Adoption of Baby W*, 43 P.3d 902 (Kan. Ct. App. 2002)).

²¹ *In re J.M.D.*, 260 P.3d 1196, 1205 (Kan. 2011).

²² See *In re Adoption of G.L.V.*, 190 P.3d 245, 259 (Kan. 2008).

²³ *In re J.M.D.*, 260 P.3d at 1205.

provide child support.²⁴ Therefore, the petitioner would have to show that the parent failed both emotionally and financially to support the child.²⁵ Furthermore, under the two-ledger approach, the petitioner had the burden to show that the parent did not do both those duties for at least two years.²⁶ The two-ledger approach provides bright-line categories and a two-year grace period requirement before a parent's rights can be terminated. In justifying the switch to the "totality of circumstances" test, the Kansas Supreme Court held "we put to rest the artificial constraints of the two-sided ledger approach and return to the historical approach of considering 'all surrounding circumstances.'"²⁷

Being that statutes are required to be strictly construed and carefully analyzed to protect the interest of a parent's constitutional right, it seems appropriate to have rigid constraints, such as the ledge approach, to provide the most thorough analysis. The two categories under the ledger approach (emotional and financial support) are wide-umbrella topics that can feature and organize all the other parental roles. In essence, it would be a totality of circumstances analysis, but with bright-line examples of what a parent can do to preserve his or her relationship with the minor child. Furthermore, the two-year burden of proof on the petitioner will also provide an additional safeguard for the natural parents' rights.

If the precedent continues to develop under the totality of the circumstances analysis, the Kansas courts and legislature might consider providing additional time restraints beyond the twelve-hour consent requirement. The six-month grace period requirement in Missouri is only an example of various time safeguards that can be used. Kansas has made great leeway in developing the precedent in this topic, and providing safeguards; however, the state should consider possibly using the two-ledger approach again and providing more time restraints.

II. EQUITABLE ADOPTION

The other unique aspect of adoption in Missouri, which is not provided in Kansas, is equitable adoption. Equitable adoption is used when a person takes all the necessary measure to care for a child, but the person neglects to do the legal paperwork for the child to be considered the person's child under the law. Equitable adoption uses equitable principles to estop the person from denying rights to the child that would otherwise be available to a birth child (and hence, a child that was properly adopted under the law). Equitable adoption is especially relevant in distributing property of intestacy.²⁸ In other words, if equity permits, the child should be able to inherit from their care-giving parent and should not bear the repercussions from the parent not going through the proper legal procedures for adoption. As stated in the well-known case regarding equitable adoption, "Equity considers that done which ought to be done."²⁹ This informal

²⁴ *Id.*

²⁵ *In re Adoption of Baby Girl P.*, 242 P.3d 1168, 1174 (Kan. 2010).

²⁶ *In re Adoption of G.L.V.*, 190 P.3d at 259.

²⁷ *Id.*

²⁸ *See generally* JESSE DUKEMINIER ET AL., *WILLS, TRUSTS, AND ESTATES* 94 (7th ed. 2005).

²⁹ *O'Neal v. Wilkes*, 439 S.E.2d 490, 494 (Ga. 1994) (Sears, J., dissenting).

type of adoption remains controversial and some states have adopted it, while others have not.

A. Missouri

Equitable adoption has been a long-standing practice in Missouri, where courts will grant one “where justice, equity, and good conscience [so] require.”³⁰ Therefore, the child can be treated as adopted as required by fairness. However, one of the main issues is that the child entitled to equitable adoption is considered a part of two distinct families (*i.e.*, the child can inherit from both the adoptive parents and the natural parent) because the doctrine does not change the child’s status to that of a legally-adopted person.³¹ “A court of equity may, where justice requires, decree a person to have rights of an adopted child for purposes of inheritance.”³² However, equitable adoption is a principle of contract enforcement, and does not in fact create a legal relationship between the adopted parent and child.³³ Although it is nice to have an equitable remedy in certain situations, equitable adoption seems to play as a pseudo-adoption that may cause more confusion rather than benefit.

If a person is able to prove that he or she has in fact cared for a child in a way that shows equity, the person should not hesitate from using the formal legal procedures provided through adoption laws. After all, these laws are meant to provide steps and structures to protect the constitutional rights of all parties involved. Even though equitable adoption does not create a legal relationship between parent and child, it only leads to confusion in allowing a child to inherit from both equitable adopted parent and a natural parent.

B. Kansas

Kansas, on the other hand, does not provide for equitable adoption. Kansas takes the view that because adoption is statutory and strictly construed, there cannot be equitable adoption.³⁴ Therefore, “[a]bsent proof of an intent to adopt, [courts] must follow statutory law of intestate succession.”³⁵ The Kansas Supreme Court has expressly denied to adopted equitable adoption doctrine because “[t]he right to take as an heir exists only by grant of the legislature.”³⁶ One of the reasons cited by the court for their express disapproval of the doctrine was that parents of the equitably adopted child could obtain legal status and the rights of a parent.³⁷ Thus, Kansas recognizes that the statutory requirements for adoption should not be circumvented by the use of equitable estoppel and enforcement of contracts. Considering the rights and privileges on the line when it comes to adoption, Kansas approach in treading cautiously in creating sub-systems of adoption is commendable.

³⁰ *In re Estate of Van Cleave*, 610 S.W.2d 620, 622 (Mo. 1981).

³¹ *Gardner v. Hancock*, 924 S.W.2d 857, 859 (Mo. Ct. App. 1996) (citing to *Kupec v. Cooper*, 593 So.2d 1176 (Fla. Ct. App. 1992)).

³² *Coon ex rel. Coon v. American Compressed Steel*, 133 S.W.3d 75, 81 (Mo. Ct. App. 2004).

³³ *Id.* at 81.

³⁴ ELROD & BUCHELE, *supra* note 1, § 6:38 (quoting *Sower v. Tsamolias*, 941 P.2d 949 (1997)).

³⁵ *Id.* (quoting *In re Estate of Ford*, 82 P.3d 747 (Cal. 2004)).

³⁶ *In re Estate of Robbins*, 738 P.2d 458, 459 (Kan. 1987).

³⁷ *Id.* at 462.

III. CONCLUSION

Missouri and Kansas both encourage adoptions, but the state's public policy and legislatures encourage different aspects of adoption laws. Missouri provides for time grace periods (minimum of six months) before finalizing an adoption. On the other hand, Kansas's time restraints are more liberal (only requiring twelve hour before a natural mother can consent to an adoption). Being that constitutional rights are on the line, Missouri's time requirements provide better opportunities for parties involved to weigh their options and have time to make the best decision for themselves and their families. In regards to equitable adoption, Missouri allows it, but Kansas does not. Missouri courts provide it as a tool for fairness, while Kansas courts have expressly held against it because it circumvents strictly construed adoption statutes. Thus, from these two examples, it is evident, while two states can be very similar, their public policies may work to promote very different processes.