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Adoption: Requisite Statutory Consent

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amendment was adopted. In spite of the strong role the State Department of Education and the State Board of Education have under the amendment—approving projects and issuing bonds—major control still remains at the local level. That is an important factor requiring active public interest in school financing.

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CASE COMMENTS

ADOPTION: REQUISITE STATUTORY CONSENT

Pugh v. Barwick, 56 So.2d 124 (Fla. 1952)

Pursuant to a letter to petitioners offering her three-month-old illegitimate son for adoption, Mrs. Pugh, then an unmarried girl of nineteen years, delivered the child to them. A year and a half later, accompanied by her newly-married husband, she went to petitioners and requested the return of the child. Petitioners refused and, having taken no formal steps to legally adopt the child, filed this petition for his adoption. Joined by her husband, the mother filed an answer to the petition. As provided by statute[1] the Welfare Board reviewed the case and recommended that respondents be awarded the custody of the child. In the course of the proceeding in the trial court the respondents moved that the petition be dismissed on the ground, inter alia, that the necessary consent of the natural parent, required by statute,[2] had not been procured. Upon the trial court's granting of the petition, respondents appealed. HELD, the letter offering the child and the subsequent delivery of the child were sufficient to constitute the consent required in our adoption statutes. Decree affirmed.

Adoption, unknown at common law, exists today solely by virtue of statute.[3] Florida passed its first general adoption statutes in 1885,[4]

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[1]FLA. STAT. §72.15 (1951).

[2]FLA. STAT. §72.14 (1951).

[3]*In re* Palmer's Adoption, 129 Fla. 630, 176 So. 537 (1937).

[4]Fla Laws 1885, c. 3594. With extremely minor changes the same acts were FLA. STAT. c. 72 (1941).

adoption prior to that time being possible only by special enactment.[5] At that time a prohibition was also placed in the Florida Constitution against enactment of a special adoption law.[6] This provision is still in effect. These first adoption laws merely provided that the judges of the circuit courts were empowered to legalize the adoption of any child by any person who applied therefor.[7] Seemingly there were no restrictions, though it was held in Re *Whetstone*[8] that in order to be constitutional[9] adoption statutes must be construed so as to authorize an adoption only in cases in which: (1) the natural parents consent; (2) they have abandoned the child;[10] (3) they have been permanently deprived of the custody of the child;[11] or (4) it is for the child's best interest that it be taken from their custody by some judicial proceeding of which they have notice.

After the passage of the early general acts and excepting the *Whetstone* qualifications, little change took place in our adoption laws for almost sixty years. It was not until 1943 that these loosely drawn acts were repealed and our present adoption laws passed.[12]

Under the present statutes the circuit court, on the chancery side,[13] acquires jurisdiction in an adoption proceeding in two ways: either (1) the petition for adoption is accompanied by the written consent of the parents executed in the presence of two witnesses and acknowledged before a notary public or other officer authorized by law to take acknowledgments,[14] or (2) the parents are given notice of the proceedings.[15]

The adoption proceeding is a three-step process. First the court acquires jurisdiction by giving the parents the opportunity to defend

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[5]Some examples of these may be seen in Fla. Laws 1883, cc. 3543-3555.

[6]FLA. CONST. Art. III, §20.

[7]FLA. STAT. §72.01 (1941).

[8]137 Fla. 712, 188 So. 576 (1939). The necessary conditions set out in the *Whetstone* case were upheld and cited as controlling in Fielding v. Highsmith, 152 Fla. 837, 13 So.2d 208 (1943).

[9]The specific constitutional requirement is not indicated, but there is a strong inference that the due process clause is involved.

[10]*Cf.* Streets v. Gammarino, 59 So.2d 520 (Fla. 1952).

[11]Fielding v. Highsmith, 152 Fla. 837, 840, 13 So.2d 208, 209 (1943), adds "by a competent court having jurisdiction of the parents and the child."

[12]FLA. STAT. c. 72 (1951).

[13]FLA. STAT. §72.21 (1951).

[14]FLA. STAT. §72.14 (1951).

[15]FLA. STAT. §72.13 (1951).

their rights.[16] These rights are then adjudicated; the conditions set out in the *Whetstone* case present the only Florida law on this point. Finally the court decides if the adoption is for the child's best interest. It is at this stage that the court tests the competency of the adopting parents. All three steps must be met or a valid decree cannot be rendered.

Statutory requirements of consent in adoption proceedings generally pertain to the consent to adoption, the consent constituting a waiver of the parental rights to the child. Such provisions are often strictly construed because of the serious consequences of consent, and many authorities favor close adherence to the formal requirements.[17] There is a judicial tendency today, however, to relax statutory requirements whenever the best interests of the child so demand.[18]

The Florida statute appears to have a two-fold application, presenting, it would seem, something of an anomaly. Section 72.14 expressly states that consent to adoption is sufficient to constitute a waiver of notice of adoption proceedings. It therefore affects the jurisdictional aspect of adoption, a step one proceeding. Consent under the statute, however, has been held to constitute a waiver of the parental rights[19] — in other words, to spell out statutorily the requisite consent in step two of an adoption proceeding, which was previously stated only in the *Whetstone decision.*

In the instant case the Court adopted a loose concept of consent by stating:[20]

> "It is true . . . that formal consent of the natural mother was not had and obtained, as required by our applicable statutes. The . . . letter, coupled with the actual delivery of the custody of the child . . . with her permission or consent to the adoption, may in this particular instance be sufficient to meet the requirements of our adoption statutes."

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[16]FLA. STAT. §§72.13, 72.14 (1951).

[17]*In re* Cozza, 163 Cal. 514, 126 Pac. 161 (1912); Foley v. Carnesi, 123 Colo. 533, 232 P.2d 186 (1951); Adoption of Capparelli, 180 Ore. 41, 175 P.2d 153 (1946); Coonradt v. Sailors, 186 Tenn. 294, 204 S.W.2d 859 (1948); 4 VERNIER, AMERICAN FAMILY LAWS 396 (1936).

[18]Hockaday v. Lynn, 200 Mo. 456, 98 S.W. 585 (1906); Nugent v. Powell, 4 Wyo. 173, 33 Pac. 23 (1893).

[19]*In re* Adoption of Long, 56 So.2d 450 (Fla. 1952).

[20]At p. 126.

Whether or not a liberal construction of adoption laws is generally desirable when the statute affects the parental rights to a child, the liberal construction of the Florida statutes is believed to be unfortunate. Because our consent provision applied both to the substantive rights of parents and to their right to notice of an adoption proceeding, a loose interpretation of Section 72.14 may result in an informal waiver of notice. Even if parents have informally waived their parental rights, it seems desirable that they be given notice of the adoption proceedings.[21] Their rights to the child are being finally adjudicated and a change of fortune may in some situations result in a change of attitude toward adoption; in fact, it is not unheard of to withdraw consent even after an interlocutory decree of adoption.[22]

No one can say with certainty what the Florida law of consent is, for a few weeks after the decision of the instant case the Court recognized the necessity for construing the consent provision strictly in the case of In re *Adoption of Long*,[23] and it was careful to point out that the consent instrument satisfied all the statutory requirements.

What, then, is the Florida law of consent? What constitutes a valid consent sufficient to give the court jurisdiction in the absence of notice and also to constitute voluntary relinquishment of the natural parents' rights? These questions apparently will remain unanswered unless the Legislature acts. Our adoption laws should be more comprehensive; their very brevity creates confusion. Rather than forcing reliance on the general conditions set forth in Re *Whetstone*[24] in determining whether a parent has relinquished his or her right to the child, the Legislature should provide definite rules governing both relinquishment and notice. The judiciary in attempting to utilize what is available in the way of enactments will continue without any great fault on its part to fail to clarify the law involved. The adoption machinery we have is wholly inadequate. There is need for a clear-cut statutory revision.

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[21]Humphrey, Appellant, 137 Mass. 84 (1884); *In re* Knott, 138 Tenn. 349, 197 S.W. 1097 (1917); *cf.* Foley v. Carnesi, 123 Colo. 533, 232 P.2d 186 (1951).

[22]Adoption of Capparelli, 180 Ore. 41, 175 P.2d 153 (1946).

[23]56 So.2d 450 (Fla. 1952).

[24]137 Fla. 712, 188 So. 576 (1939).