OPINION
47-96

April 2, 1947 (OPINION)

ADOPTION

RE: Children Right of Inheritance - Sec. 14-1113-14

I received your letter of March 28, 1947, concerning the distribution of the Alex Stalarenko estate. Alex Stalarenko died in 1940, leaving four heirs, sons and daughters, one of whom a child by the name of Mary Ann Christ, now know as Mary Ann Christ Holden, was adopted. Mr. and Mrs. Anton Christ adopted this child on February 6, 1929, when the child was six years of age. I understand that the adoption proceedings appear regular and that there is no question that Mary Ann Christ Holden was legally adopted on February 6, 1919, by Mr. and Mrs. Anton Christ.

The question arises as to whether or not Mary Ann Christ Holden, the natural child of Alex Stalarenko and his wife, but the adopted daughter of Mr. and Mrs. Anton Christ, is entitled to share in the estate of her natural father, Alex Stalarenko.

Section 14-1113 of the 1943 Revised Code reads as follows:

> "The child so adopted shall be deemed, as respects all legal consequences and incidents of the natural relation of parent and child, the child of such parent or parents by adoption the same as if he had been born to them in lawful wedlock."

Section 14-1114 of the 1943 Revised Code reads as follows:

> "The natural parents of an adopted child shall be deprived by the decree of adoption of all legal rights respecting the child, and the child shall be free from all obligations of maintenance and obedience respecting his natural parents."

The question arises as to whether or not the foregoing statutes in any way affect the right of an adopted child to inherit from the natural parent.

Under the law of succession, section 56-0103 of the 1943 Revised Code, property real and personal, which is not disposed of by will passes to the heirs of the intestate subject to the control of the county court and to the possession of any administrator appointed by that court for the purpose of administration. Section 56-0104 of the 1943 Revised Code expressly provides the manner of distribution of property of an intestate. If I recall correctly, at the time of the death of Alex Stalarenko he left surviving him only four children, one of whom was the adopted child hereinbefore referred to. Since he died intestate, his property would be distributed under subdivision c of subsection 1 of section 56-0104, which provides that if the decedent leaves no surviving husband or wife but leaves issue, the whole estate goes to such issue, and if such issue consists of more than one child living, or of one child, or more than one child, living, ad the lawful issue of one or more deceased children, then

the estate goes in equal share to the children living, or to the child or children living and the issue of the deceased child or children by right of representation, but if the decedent's child or children shall be dead, but shall have left issue, all the estate goes to such issue by right of representation.

It will be noted that in subdivision c of subsection 1 of section 56-0104, the word "issue" is emphasized. The primary meaning of the word "issue" includes all descendants but would not include the heirs at law of a person dying without children. Thus, while the word "issue" would be included within the broader definition of the word "heir" a devise to "heirs" might include a class not included within a devise to his "issue". See Bodine v. Brown, 42 N.Y.S. 202, 204, 12 App. Div. 335.

In view of the emphasis placed upon the word "issue" in the statute of succession, an adopted child would seem to come within that term as it relates to its right to inherit from the natural parents. The change of its legal status by adoption does not eliminate the fact that such child is the "issue" of the natural parent.

While at first glance it would seem that an adopted child, having become in legal effect the child of the adopting parents, should not inherit from the natural parent, authorities on that proposition seem to be that it does inherit from the natural parent.

> "In the absence of a statute to the contrary, although the child inherits from the adoptive parent he still inherits from or through his blood relatives, or his natural parents. In view of the tendency of the courts to construe adoption statutes so as to benefit the child, as pointed out above in section 6 of this Title, and also, in view of the fact that a statute severing the relation between parent and child is in derogation of common law and should for that reason be strictly construed, it has been held that an adoption statute providing that the natural parents shall be divested of all legal rights and obligations with respect to such child, should not be construed so as to deprive the child of its right to inherit from or through its natural parents. Under such a statute it cannot be assumed that the adopted child cannot inherit from its natural parent unless there is an express legislative declaration to that effect. ***" 2 C.J.S. 455.

As far as I can determine, there is no statute in the state of North Dakota that would prevent an adopted child from inheriting from its natural parent unless we were to assume that such a situation would arise by implication in view of the provisions of section 14-1113 and 14-1114 of the 1943 Revised Code. But such assumption is not warranted in view of the authorities, and particularly the case of Sorenson v. Chruchill, 51 S.D. 113, 212 N. . 488. This case holds that laws of adoption do not limit the adopted child's right to inherit from natural parents under the provisions of sections 208-210, 701 of the Revised Code of 1919 of the state of South Dakota. The court bases its decision primarily on the following reason:

> "Under the law of adoption, the natural parent and the adopting

> parent each must consent to the new relationship before the child can be legally adopted. By consent each is bound. The adopted child, the person principally affected by the transaction, has no choice and gives no consent. His natural parent, by his consent to his adoption, loses his right to inherit from his natural son. But no one consents for the innocent and helpless subject of the transfer that he shall lose the right to inherit from his natural parent, whose issue, under section 701, he does not cease to be when the right to his control passes to another."

Our North Dakota supreme court has never passed directly on this question, but I am confident that the South Dakota case cited supra would constitute compelling logic as far as our court is concerned. Other authorities are cited in the decision. See Roberts v. Roberts, 160 Minn. 140, 199 N.W. 581.

In searching the law on this question, only one case has come to my attention that would indicate that an adopted child would not have the right to inherit from his natural parents. This is the case of Boosey v. Darling, 173 Calif. 221, 159 Pac. 606. In that case, the court held that despite restriction upon inheritance, an adopted child could inherit from its natural grandparent, but could not inherit from its natural parent.

In view of the authorities and the statutes hereinbefore cited, it is the opinion of this office that an adopted child is within the term "issue" as used in the statute of succession and under North Dakota law may inherit from its natural parent.

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Attorney General