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THE ADOPTEE'S RIGHT TO KNOW: *IN RE ADOPTION OF A FEMALE INFANT*

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INTRODUCTION

Among the most difficult questions arising out of an adoption is whether a record should be reopened at the request of an adult adoptee seeking information about his or her biological parents. In most jurisdictions an adoptee seeking this information must obtain a court order.[1]

Adoption proceedings are statutory and, therefore, proceedings to unseal records are governed by state adoption laws. However, existing statutory standards are vague. Ultimately the decision to grant or deny access is a discretionary one lying with the courts. Further, in exercising their discretion, courts are faced with the difficult problem of resolving potentially conflicting interests of the adoptee, the biological parents and the adoptive parents without specific guidelines.[2]

This note will address interpretation of statutory standards for unsealing records under an adoption statute in a recent District of Columbia Superior Court decision to open an adoption record at the request of the adoptee.[3] The court took judicial initiative in writing

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* Antioch School of Law, J.D. 1981; Long Island University (Brooklyn), B.A. 1973.

[1] *See The Adoptee's Right to Know his Natural Heritage*, 19 N.Y.L.F. 137, n.5 (1973) for a complete list of states with sealed record statutes. The court in the instant case, In re Adoption of a Female Infant, cited Alabama, Kansas and South Dakota as being the only states permitting access to the records by an adoptee without a court order. Ala. Code § 26-10-5 (1975); Kan. Stat. Anno. § 65-2423 (Vernon 1972); S.D. Comp. Laws Ann. § 25-6-15 (1976). 107 Daily Washington Law Reporter 337, n.2.

[2] *See* J. Triseliotis, In Search of Origins: The Experience of Adopted People (1973); Sorosky, Baran and Pannor, *The Reunion of Adoptees and their Birth Relatives*, 3 Journal of Youth and Adolescence 195 (1974); B. Jaffee and D. Fanshel, How They Fared Up in Adoption: A Follow-up Study (1970); *Breaking the Seal: Constitutionality and Statutory Approaches to Adult Adoptees Right to Identity*, 75 Northwestern Univ. L. Rev. 316 (1980); *A Reasonable Approach to the Adoptee's Sealed Records Dilemma*, 2 Ohio Northern L. Rev. 542 (1975); Lajoie, *Access to Birth Records: An Adult Adoptee's Psychological Need and Constitutional Right*, 21 N. Hampshire Bar J. 103 (1980); Sorosky, Baran and Pannor, *Adoptive Parents and the Sealed Record Controversy*, 55 Social Casework 531 (1974). For additional listing of articles on adoption *see Sealed Records in Adoptions: The Need for Legislative Reform*, 21 Catholic Lawyer 211, nn. 10 and 41 (1975). While the goal of an adoption statute is to protect all the parties its primary goal is to protect the child. Frequently, the interests of the parties conflict when the adoptee reaches adulthood and desires to learn the identity of his birth parents. In re Adoption of a Minor, 79 U.S. App. D.C. 191, 193, 144 F.2d 644, 646, nn. 3, 4 (1944).

[3] For an analysis of other state statutes *see Confidentiality of Adoption Records: An Examination*, 52 Tulane L. Rev. 817 (1978).

its opinion which contained an unusually thorough analysis of the conflicting interests and considered a wide range of factors in attempting to apply the broad statutory standards. The standards for reopening an adoptee's record in the District of Columbia are similar to those in other jurisdictions. Thus, the problem the Superior Court faced in applying the District of Columbia statute is similar to problems which have arisen in other jurisdictions.

Facts and Background

In re Adoption of a Female Infant[4] came before the Superior Court of the District of Columbia pursuant to a District of Columbia Court of Appeals decision remanding the case for a full evidentiary hearing. The adoptee, an adult female, filed a petition seeking permission to examine the court records relating to her adoption. She based her petition on the following allegations contained in an affidavit submitted to the court and quoted at length in the opinion:

> . . . It was not until my teenage years that I came to comprehend the meaning of being adopted. Since then I have desired to know the identities of my natural parents and other members of my natural, immediate family. Not having the information about my natural parents and other members of my immediate family has left me with a feeling of emptiness and confusion about who I am. I love my adoptive parents but feel deprived by not being able to love my natural parents and natural brothers and sisters, and not being able to be loved by them. Another reason why I desire information . . . is that I am now the mother of two children and have no information of any possible inherited diseases or conditions in my natural family.[5]

Petitioner also asserted that her adoptive parents were aware of her efforts to find her biological parents and supported her in this quest.[6]

The applicable District of Columbia statute provides that adoption records "may not be inspected by any person . . . except upon order from the court, and only when the court is satisfied that the welfare of the child will thereby be promoted or protected."[7] The Superior Court denied the relief sought, and its opinion stressed that this language is vague and gave little practical guidance to the court in granting or denying petitioner access to the records. First, the court pointed to the social policy of sealing adoption records as set up by the

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[4] 107 Daily Washington Law Reporter 337 (Feb. 23, 1979).

[5] Petitioner's Affidavit. *See* In re Adoption of a Female Infant, 105 Daily Washington Law Reporter 245 (Feb. 11, 1977).

[6] *Id.*

[7] 107 Daily Washington Law Reporter at 342. *See* D.C. Code § 16-311 (1973).

legislature.[8] Second, the court considered the need to deal with this question on general legal grounds instead of making an ad hoc decision for this petitioner.[9] The court then emphasized that

> [T]he balancing of the rights of so many other possibly affected persons against the desire of the petitioner here presents a difficult question. Even if the court were to undertake the delicate task of . . . attempting to investigate and resolve the competing and psychological problems, the personnel and facilities are not available for such efforts by the court.[10]

The court concluded that "because of the serious precedential implications of this petition, which presents a new and novel issue . . . this court cannot grant the relief sought. Yet a definitive binding appellate decision would be helpful."[11]

Petitioner appealed the Superior Court's ruling to the District of Columbia Court of Appeals.[12] The appellate court stated that while the lower court "explored at some length the competing considerations"[13] it denied the petition without a hearing because of its concern for the "serious precedential implications of this petition."[14] Examining the appellant's petition, the Court of Appeals concluded that ". . . [i]t is difficult to imagine a more persuasive preliminary showing by an adoptee than we have here" and that ". . . [t]he time has come to come to grips with this touching question on the merits."[15] While the lower court denied petitioner an evidentiary hearing because the court did not have "the facilities or the personnel"[16] to deal with the complex legal and psychological problems, the Court of Appeals remanded the case for a full evidentiary hearing based on the need to resolve those very same sensitive issues. Finally, the Court of Appeals commended to the trial court a New Jersey case dealing with the sensitive issues involved in such a reunion.[17]

Decision of the Superior Court on Remand

On remand the case was assigned to Judge Green of the Superior Court of the District of Columbia. A full evidentiary hearing was held

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[8] In re Adoption of a Female Infant, 105 Daily Washington Law Reporter at 337.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] In re C.A.B., 384 A.2d 679, 680 (D.C. 1978).

[13] *Id.*

[14] *Id.*

[15] *Id.*, at 680.

[16] In re Adoption of a Female Infant, 105 Daily Washington Law Reporter at 250.

[17] The appellate court suggested Mills v. Atlantic City Department of Vital Statistics, 148 N.J. Super. 302, 372 A.2d 646 (Ch. Div. 1977). In re C.A.B. *see* note 12 *supra.*

where petitioner presented testimony by her adoptive mother and experts in the field of adoption. The court found for petitioner.[18] While Judge Green stressed her holding was based entirely on the facts and that future decisions should be on a case by case basis the opinion is thorough and sensitive in its consideration of the interests to be balanced, and thus offers considerable guidance for future cases.

In its opinion, the court looked to the legislative intent of the City Council of the District of Columbia in requiring that adoption records be sealed. While the statute seeks primarily to protect the adoptee,[19] it also protects the adoptive parents from any stigma of illegitimacy[20] and insures the privacy of the natural parents.[21] Over the past decade, though, commentators and various organizations have argued against sealing adoption records permanently. Groups such as Adoptees in Search, Orphan Voyage, Yesterday's Children, and the Adoptee's Liberty Movement Association have advocated reunions between adoptees and their natural parents, and scholars have maintained that an adoptee has a right to know about his or her past.[22] The argument is that adoptees have more diffculty in developing a strong "feeling of self" than do people raised by natural parents.[23] The lack of knowledge of their biological ancestry leaves them with a feeling of alienation from their past and often results in psychological problems.[24]

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[18] 107 Daily Washington Law Reporter at 345.

[19] See In re Anonymous, 89 Misc.2d 132, 390 N.Y.S.2d 779 (Sur. Ct. 1976); In re Adoption of Tachick, 60 Wisc.2d 540, 210 N.W.2d 865 (1973); In re Adoption of Baker, 117 Ohio App. 26, 185 N.E.2d 51 (1962); The court in *Female Infant* cited Barnes v. Paanakker, 72 App. D.C. 39, 41, 111 F.2d 193, 198 (1940); 107 Daily Washington Law Reporter at 342. The stigma of illegitimacy was a consideration in protecting the child and adoptive parents when adoption statutes were first written. *Opening the Sealed Record in Adoption—The Human Need for Continuity*, 51 Jewish Communal Service 188 (1974).

[20] *See* M. Pringle, Adoption Facts and Fallacies, 27 (1967); In re P, 114 N.J. Super. 584, 277 A.2d 566 (1971); In re Maxtone-Graham, 90 Misc.2d 107, 393 N.Y.S.2d 835 (Sur. Ct. 1975). The court cited In re Adoption of a Minor, note 2 *supra;* 107 Daily Washington Law Reporter at 342.

[21] This is to encourage natural parents to surrender their children for adoption when the original family cannot provide for the child. In re Linda F.M., 92 Misc.2d 828, 401 N.Y.S.2d 960 (Sur. Ct. 1978); In re Adoption of Randolph, 66 Wisc.2d 64, 227 N.W.2d 634 (1975). The court cited People v. Doe, 138 N.Y.S.2d 307, 309 (Erie County Ct. 1955); 107 Daily Washington Law Reporter at 342.

[22] For a complete list of adoptee organizations *see* Sorosky, Baran and Pannor, The Adoption Triangle (1978). Also, *see* note 3 *supra*.

[23] Committee on Adoptions, American Academy of Pediatrics, *Identify Development in Adopted Children*, 47 Pediatrics 948 (1971).

[24] Problems arise especially during adolescence, pending marriage, marriage and pregnancy. *See* Goodman, Silberstein and Mandell, *Adopted Children Brought to Child Psychiatric Clinic*, 9 Archives Gen. Psychiatry 451 (1963); Schechter, Carlson, Simmons and Work, *Emotional Problems in the Adoptee*, 10 Archives Gen. Psychiatry 109 (1964); Simon and Senturia, *Adoption and Psychiatric Illness*, 122 Am. J. Psychiatry 858 (1966); Committee on Adoptions,

Judge Green stated that the District of Columbia has been involved in this debate, too. There were several articles published in the local newspapers as well as a City Council debate where the District of Columbia's City Council Judiciary Committee conducted public hearings concerning a bill that would have given adoptees access to information about themselves. After passing several amendments and receiving preliminary approval by the City Council, the bill was defeated.[25]

Judge Green found that *In re Adoption of a Female Infant* posed three questions:

> 1. Whether and to what degree the Court may consider the interests of the petitioner's birth parents and adoptive parents in determining whether disclosure of the information the petitioner seeks will promote or protect her welfare.
> 2. Whether the adoptee's professed concern regarding possible hereditary diseases or defects is sufficient to support a finding that disclosure of medical information would promote or protect the adoptee's welfare thereby rebutting the precedential position that such information should remain confidential.
> 3. Whether the adoptee's allegations of bewilderment concerning her identity are sufficient to support a finding that disclosure of identifying information concerning her birth parents would promote or protect her welfare.[26]

American Academy of Pediatrics, *Identity Development in Adopted Children*, 47 Pediatrics 948 (1971). The court cited Sorosky, Baran and Pannor, *Identity Conflicts in Adoptees*, 45 American J. Orthopsychiatry 18 (1975); 107 Daily Washington Law Reporter at 344.

[25] In the court's own description:

> The bill would have permitted an adult adoptee to inspect his or her original birth certificate if one or more of his birth parents consented to such inspection. If one parent objected to inspection of the birth certificate, identifying information concerning that parent would be deleted. Access to the adoption agency files for the purpose of obtaining medical information would have been permitted provided identifying information was stricken. Finally, access to the court adoption records would have been allowed the adoptee upon a court order finding that such inspection would promote or protect the adoptee's welfare.

In re Adoption of a Female Infant, 107 Daily Washington Law Reporter at 343. *See* Bill 2-238, Inspection of Adoptees' Record Act of 1978, Jud. Com. Rep. (Oct. 25, 1978). The court cited three articles that appeared in the local newspapers: Lesem, *Parent and Child: Adoption and the American Heritage Search*, Wash. Post, May 29, 1977, § H, at 7, col. 1; Mann, *Search is for Identity not for a Real Parent*, Wash. Post, Jan. 19, 1979, § B, at 1, col. 1; Moody, *Seeking an Identity of One's Own*, Wash. Post, Nov. 26, 1978, § G, at 1, col. 3.

[26] 107 Daily Washington Law Reporter at 343. The court mentioned the importance of the statute's ensuring the privacy of the birth parents and encouraging them to surrender their children for adoption, securing the knowledge that they may pick up the threads of their lives within adverse notoriety. Sealing the court records also provides a guarantee to the adoptive parents that the adopted child completely becomes their own without fear of later interference by the natural parents.

Since the District of Columbia statute did not specifically address these three issues, the court looked to cases in other jurisdictions. Following the suggestion of the District of Columbia Court of Appeals, the Superior Court looked to the leading New Jersey case, *Mills v. Atlantic City Department of Vital Statistics*.[27]

The facts and applicable statute of *Mills* are similar to the instant case. There, adult adoptees sought access to their adoption records. They challenged the constitutionality of the New Jersey Adoption Act[28] which required the state registrar to place under seal the original birth certificate of any child who is adopted, thereby placing a shield of secrecy over the identity of the child's natural parents. Additionally, plaintiffs challenged the Adoption Act provision that the seal of secrecy may be broken only upon the order of the court for good cause shown.[29] The Act did not provide for specific standards but provided for the promotion of "the policies and procedures socially necessary and desirable for protecting not only the child but also the natural and adopting parents."[30] The Court in *Mills* established procedures for granting access to the records.[31] The *Mills* Court concluded that because petitioners were adults, the burden of proof for denying disclosure should shift to the state.[32]

Judge Green's first question focused on accommodating both the birth parents' right to anonymity and the adoptee's need to know her identity. The court said that while other jurisdictions "attempted to balance the interests of all affected parties, and in so doing have afforded great weight to the birth parents' interests . . . there is no

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[27] 148 N.J. Super. 302, 372 A.2d 646 (Ch. Div. 1977).

[28] N.J. Stat. Anno. § 9:3-17, et. seq. (West). In *Mills* the court stated that where the adoptee has reached majority, the burden shall shift to the state to demonstrate that "good cause" is not present. *Mills*, 372 A.2d at 654.

[29] *Mills*, 372 A.2d at 646.

[30] *Mills*, 372 A.2d at 649.

[31] The court listed the following steps as guidelines: 1) requests coming before the Court will be assigned to the agency that made the placement, 2) that agency acts as the arm of the Court and will have full freedom to the records, 3) where the natural parents consent, Court approval is automatic, 4) if not, the agency will approach the parents to solicit their consent and obtain permission to broker a contact, 5) the agency should not broker a contact if harm to either party will result, 6) nevertheless, the agency should work to meet the implicit requests of the adoptee, where feasible, and 7) if the agency or biological parents refuse to divulge information then the adoptee shall have the right to appeal to the Court. *Mills*, 372 A.2d at 656.

[32] *Mills*, 372 A.2d at 654. Once a relationship has been established between a child and an adult who has provided for the daily care and affection of the child, that parent becomes the "psychological" parent. When the child grows up that care will not be dismissed if the adoptee seeks to know his or her natural parents. *See* Goldstein, Freud and Solnit, Beyond the Best Interests of the Child (1973). The court in *Mills* noted that this book has been cited with approval by a Maryland Court of Appeals, Ross v. Hoffman, 33 Md. App. 333, 364 A.2d 596, (1976), *affd. as modified*, 372 A.2d 582 (1977). *Mills*, 372 A.2d at 650, n.1.

mandate that the Court balance the interests involved. Indeed the phrasing of the statute prohibits any such balancing process."[33] Even though the court read the statute to prohibit a balancing process, the court carefully examined all the interests involved. The court expressed concern about the distress a reunion might cause but pointed out that ". . . the situation presented by an *adult* adoptee's petition for disclosure differs vastly from that presented by a minor's request."[34] In the absence of statutory guidelines, the Court stressed petitioner's adult status as a crucial fact outweighing the need for maintaining the natural parents' anonymity. Judge Green concluded that since petitioner is an adult the burden of proof should shift from the adoptee to the District of Columbia.[35] The Court held that ". . . since it has not been demonstrated that disclosure would not prejudice the adoptee's best interests, the petitioner's request must and will be granted."[36]

Judge Green next addressed the question of petitioner's need for medical information and found that knowledge about hereditary problems and the fact that petitioner has children promotes the adoptee's welfare. Judge Green weighed the possibility that petitioner may have received an incomplete medical history from the adoption agency. She reasoned that the record could be incomplete because information is supplied to the agency through the natural parents and if contact between the two is minimal, then medical information may be omitted or incomplete. Thus, for petitioner to gain complete medical information she must be allowed to contact her natural parents. Here, the Court stressed, as it did in discussing the first issue, that it may not counterbalance the natural parents' interests against those of the adoptee.[37]

Finally, in considering petitioner's allegation of genealogical bewilderment, the court looked to petitioner's testimony in which she claimed that ". . . [s]he possessed a deep-seated urgent desire to find and meet her birth parents and older siblings and she hoped to de-

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[33] 107 Daily Washington Law Reporter at 343.

[34] *Id.* at 344. Differentiating the requests of a child and an adult adoptee is not addressed in the statute or any District of Columbia case law.

[35] Judge Green cited In re Osborne, 294 A.2d 372 (D.C. 1972) in support of the proposition that it is not for the court to decide what is in the best interests of the adult. 107 Daily Washington Law Reporter at 344.

[36] 107 Daily Washington Law Reporter at 344.

[37] *Id. See Mills*, 372 A.2d at 646; Chattam v. Bennett, 57 A.D.2d 618, 393 N.Y.S.2d 768 (1977). Judge Green pointed to petitioner's having two children as "making her concern even more compelling." 107 Daily Washington Law Reporter at 344.

velop a friendly relationship with them."[38] The court was convinced that petitioner's allegation of and testimony concerning genealogical bewilderment was genuine and that her desire to meet her natural parents stemmed from "a desire to complete her sense of identity by finding the people with whom she shares a deep biological bond."[39] Judge Green pointed to the difficulty of the question, cited studies which spoke to the adoptee's bewilderment[40] and finally relied on and agreed with the court in *Mills* stating that ". . . [A]n adoptee who is moved to a court proceeding such as the one here is impelled by a need to know that is far deeper than mere curiosity."[41]

The court relied once again on *Mills* in fashioning a remedy for petitioner. The court ordered the District of Columbia Department of Human Resources to initiate a search for the biological parents. The agency was ordered to obtain the parents' consent to disclose their identities to the petitioner. Once contacted, the parents could state their objections, if any. If there were objections, the biological parents would be permitted to voice their concerns.[42] Should the parents object to disclosure, petitioner's interest would still override those of the natural parents, the court held, but petitioner would then have to consider whether or not she still wanted to ascertain the identity of her natural parents and meet with them.

Conclusion

Courts dealing with adoption cases share the problem of having to interpret vague statutory language.[43] Questions of statutory inter-

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[38] The court observed that, "petitioner also testified that she would not force herself upon her birth parents if they indicated that they did not want to meet her." 107 Daily Washington Law Reporter at 344.

[39] *Id.*

[40] The court noted that scholars in adoption have determined that "adoptees are more likely than other people to develop identity problems in late adolescence and early childhood." Sorosky, Baran and Pannor, *Identity Conflicts in Adoptees*, 45 Am. J. of Orthopsychiatry 18 (Jan. 1975). 107 Daily Washington Law Reporter at 344.

[41] *Mills*, 372 A.2d at 655.

[42] 107 Daily Washington Law Reporter at 346.

[43] In re Wells, 108 U.S. App. D.C. 235, 281 F.2d 68 (1960) (access denied to biological mother without sufficient evidence to promoting the child's best interests); In re Ann Carol S., 172 N.Y.L.J. 31, August 13, 1974, at 12 col. 6 (Sur. Ct. Bronx Cty.) ("curiosity to one's forebearers" was insufficient in allowing access); Estate of Maxtone-Graham, 173 N.Y.L.J. 66, April 7, 1975, at 17, col. 4 (Sur. N.Y. Cty.) (petitioner allowed access to records after locating her natural mother but denied access to information about her foster parents); Spillman v. Parker, 332 So.2d 573, 576 (La. App. 1976) (petitioner was allowed access to the birth records to ascertain whether he inherited property from his natural parents); Hubbard v. Superior Court, 11 Cal. Rptr. 700 Ct. App. 1961) (request to open the adoption records to alternative beneficiary of adoptive mother denied); In re Adoption of Rand, 347 So.2d 450 (Fla. Ct. App. 1977) (request for medical information alone insufficient to unseal records); *See* notes 17, 18 and 19 *supra*. The

pretation may be resolved by legislative enactment but often this does not meet the need for timely change.

The court in *Female Infant* offers a clear alternative—judicial action. The court, in recognizing the sensitive concerns of all the parties and the difficulty of applying the District of Columbia adoption statute breaks down the issue of granting access to the petitioner into three questions. First, it considers the interests of both sets of parents as against those of the petitioner. Second, it looks to the question of releasing medical information to the petitioner. Third, it considers petitioner's allegations of "bewilderment concerning her identity."[44]

The court carefully weighs the interests of all the parties in deciding these issues stressing the importance of the facts of this particular case. The court also points to petitioner's adult status as determinative in shifting the burden of proof to the District of Columbia.[45]

The court granted petitioner's request but did not allow petitioner immediate and general access. Rather, its remedy was specific in first ordering an investigation by a public social agency with a report of its findings submitted to the court.[46]

The court in *Female Infant* interpreted the statutory language, recognized the implicit issues, looked at the facts carefully and furnished a specific remedy. Courts in other jurisdictions may now look to *Female Infant* not only for guidelines but also for determination in using judicial action in adoption proceedings where the legislature has not provided specific standards.

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court in the instant case cited People v. Doe, 138 N.Y.S.2d 307 (Erie Cty. Ct. 1955) (the needs of the biological mother for anonymity outweighed the request by the adoptee to examine the records), 107 Daily Washington Law Reporter at 342.

[44] 107 Daily Washington Law Reporter at 343.

[45] The court did not give any reason for the shifting of the burden of proof but cites *Mills* as authority for the proposition. 107 Daily Washington Law Reporter at 344.

[46] *See* text accompanying note 39 *supra*.