

DRL § 117(1)(e): New York Court of Appeals Extends Preserved Right of Inheritance Under Laws of Intestacy to Issue of Adopted-Out Child

Kimberly Roeder

Follow this and additional works at: <https://scholarship.law.stjohns.edu/lawreview>

Recommended Citation

Roeder, Kimberly (1993) "DRL § 117(1)(e): New York Court of Appeals Extends Preserved Right of Inheritance Under Laws of Intestacy to Issue of Adopted-Out Child," *St. John's Law Review*: Vol. 66 : No. 4 , Article 15.
Available at: <https://scholarship.law.stjohns.edu/lawreview/vol66/iss4/15>

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact lasalar@stjohns.edu.

DOMESTIC LAW

DRL § 117(1)(e): New York Court of Appeals Extends Preserved Right of Inheritance Under Laws of Intestacy to Issue of Adopted-Out Child

Prior to 1986, New York Domestic Relations Law ("DRL") section 117¹ provided a simple rule to govern inheritance rights of adopted-out children.² Adopted-out children were assimilated into their adoptive families and inheritance rights from and through the natural family were completely severed.³ In 1986, DRL section 117 was amended to provide that, in cases of stepparent adoptions, the inheritance rights of adoptive children and their issue from and through the natural family would be preserved in construing wills and other instruments.⁴ However, children adopted by a step-

¹ DRL § 117(1) (McKinney 1989). Prior to 1986, DRL § 117 provided generally that "[t]he rights of an adoptive child to inheritance and succession from and through his natural parents shall terminate upon the making of an order of adoption." DRL § 117(1). DRL § 117 further provided that this termination of inheritance rights applied only with respect to intestate descent and distribution, and did "not affect the right of any child to distribution of property under the will of his natural parents or their . . . kindred." *Id.* § 117(2). In order for an adopted-out child to inherit under the will of a biological ancestor, however, the will must specifically name the child, or the class gift expressly include children adopted out of the family. *Matter of Best*, 66 N.Y.2d 151, 156, 495 N.Y.S.2d 345, 348, 485 N.E.2d 1010, 1013 (1985), *cert. denied sub nom. McCollum v. Reid*, 475 U.S. 1083 (1986).

² The term "adopted-out child" refers to those natural persons who would be considered members of their natural families but for the adoption by an adoptive parent or parents. Memorandum of the Law Revision Commission Relating to Inheritance Rights of Children Adopted Out of a Class by Persons Related to Them by Blood or by Marriage, [1986] N.Y. LAW REV. COMM'N REP., reprinted in [1986] N.Y. Laws 2558, 2560 n.2 (McKinney) [hereinafter 1986 N.Y. LAW REV. COMM'N REP.].

³ SECOND REP. OF TEMPORARY STATE COMM'N ON MODERNIZATION, REVISION AND SIMPLIFICATION OF LAW OF ESTATES, "INTESTATE SUCCESSION AND THE ADOPTED CHILD," [1963] N.Y. LEGIS. DOC. NO. 19, App. E 147, 158-60; *see also* *Matter of Etheridge*, 136 Misc. 2d 233, 236, 518 N.Y.S.2d 723, 724 (Sur. Ct. Kings County 1987) (discussing rationale of Bennett Commission's determination that severance and assimilation of adoptive child was socially and psychologically desirable).

⁴ The term "stepparent adoption" is used in the text for simplicity. Inheritance rights from and through the natural family were also preserved for those children who were adopted within the family. *See* DRL § 117(2)(b). The 1986 amendment to DRL § 117 provided that in construing wills and other instruments, a class gift will "be deemed to include an adoptive child who was a member of such class in his or her natural relationship prior to adoption, and the issue of such child, only if: (1) an adoptive parent (i) is married to the child's natural parent, (ii) is the child's natural grandparent, or (iii) is a descendant of such grandparent, and (2) the testator or creator is the child's natural grandparent or a descen-

parent did not inherit from or through the natural non-custodial parent under the laws of intestacy, despite possible continuing relations with that parent.⁵ This controversial result was partially resolved in 1987, when DRL section 117 was again amended to provide that in cases of stepparent adoptions, adoptive children would inherit from and through their natural non-custodial parent under the laws of intestacy.⁶ The 1987 amendment, however, did not explicitly extend this right of inheritance to the issue of adoptive children, unlike the similar statute governing the interpretation of wills and other instruments.⁷ Notably, the New York Court of Appeals, in *Matter of Seaman*,⁸ found an implied right of intestate inheritance in the issue of children adopted by stepparents.⁹

The facts of *Seaman* were genealogically complex: Lloyd Seaman married Gladys Dudley and the couple had one son, Lloyd Dudley Seaman ("Dudley").¹⁰ Lloyd Seaman and Gladys Dudley divorced, and Gladys married Clarence Linder, who subsequently adopted Dudley.¹¹ Meanwhile, Lloyd Seaman had married Mary Ward and they had a daughter, the decedent, Roberta Seaman.¹² Dudley, therefore, was the adopted-out half brother of the decedent.¹³ Dudley predeceased the decedent, who died intestate, and Dudley's daughter, Charlotte, wanted to inherit through her father

dant of such grandparent." *Id.* (emphasis added).

⁵ Memorandum of the Law Revision Commission Relating to Intestate Descent and Distribution of Property to Children Adopted Out of a Class by Persons Related to Them by Blood or by Marriage, [1987] N.Y. LAW REV. COMM'N REP., reprinted in [1987] N.Y. Laws 1928, 1928-30 (McKinney) [hereinafter 1987 N.Y. LAW REV. COMM'N. REP].

⁶ The 1987 amendment to DRL § 117 provided that where

(1) the decedent is the adoptive child's natural grandparent or is a descendant of such grandparent, and (2) an adoptive parent (i) is married to the child's natural parent, (ii) is the child's natural grandparent, or (iii) descended from such grandparent, the rights of an adoptive child to inheritance and succession from and through either natural parent shall not terminate upon the making of an order for adoption.

DRL § 117(1)(e).

⁷ Compare DRL § 117(2)(b), *supra* note 4, with DRL § 117(1)(e), *id.* (DRL § 117(2)(b) containing express extension to "the issue of such [adoptive] child"; DRL § 117(1)(e) lacking any mention of the issue of the adoptive child).

⁸ 78 N.Y.2d 451, 583 N.E.2d 294, 576 N.Y.S.2d 838 (1991).

⁹ *Id.* at 454, 583 N.E.2d at 296, 576 N.Y.S.2d at 840.

¹⁰ *Matter of Seaman*, 144 Misc. 2d 84, 85, 543 N.Y.S.2d 252, 253 (Sur. Ct. Onondaga County 1989), *aff'd*, 163 A.D.2d 870, 559 N.Y.S.2d 216 (4th Dep't 1990), *rev'd*, 78 N.Y.2d 451, 583 N.E.2d 294, 576 N.Y.S.2d 838 (1991).

¹¹ *Id.* at 85, 543 N.Y.S.2d at 253.

¹² *Id.*

¹³ *Id.*

from the estate of Roberta Seaman.¹⁴

The court in *Seaman* held that the right of inheritance preserved for the adoptive child in DRL section 117(1)(e) extends to the issue of such adoptive child.¹⁵ To compensate for the absence of an express statutory provision,¹⁶ the court posited several analytical arguments to support its conclusion. After examining the legislative history of DRL section 117, the court reasoned that the legislature had “implicitly” extended the preserved inheritance rights to the issue of an adoptive child when it granted them to the adoptive child itself.¹⁷ The court also stated that the inclusion of the word “issue” in DRL section 117(1)(e) was unnecessary because the right of a child to inherit through intestacy is primarily governed by EPTL section 4-1.1, unless otherwise limited by DRL section 117.¹⁸ Because Dudley’s inheritance through his natural family was protected under DRL section 117(1)(e), Dudley’s rights were not “otherwise limited,” and Charlotte was free to inherit

¹⁴ *Seaman*, 78 N.Y.2d at 453, 583 N.E.2d at 295, 576 N.Y.S.2d at 839.

¹⁵ *Id.* at 454, 583 N.E.2d at 296, 576 N.Y.S.2d at 840.

¹⁶ The propriety of a judicial extension of inheritance rights to an unmentioned class in the governing statute is questionable. *See Nesbit v. N.Y.C. Conciliation & Appeals Bd.*, 56 N.Y.2d 340, 437 N.E.2d 1115, 452 N.Y.S.2d 358 (1982). The New York Court of Appeals has held that when a statute such as DRL § 117(1)(e) describes the specific situations to which it is to apply, an “irrefutable reference” must be drawn that what is omitted or not included” was so intended. *Id.* at 345, 437 N.E.2d at 1117, 452 N.Y.S.2d at 360. Additionally, DRL § 117(2)(b) expressly provides for not only the adopted child but also “the issue of such child,” and it is reasonable to conclude that the legislature intentionally used different terms in various parts of the statute to denote different meanings. *Albano v. Kirby*, 36 N.Y.2d 526, 530, 330 N.E.2d 615, 618, 369 N.Y.S.2d 655, 658-59 (1975).

¹⁷ *Seaman*, 78 N.Y.2d at 456-57, 583 N.E.2d at 296-97, 576 N.Y.S.2d at 841. To demonstrate the logic of its rationale, the court referred to the 1963 statutory amendments to DRL § 117 which severed the adopted child’s right to inherit from his natural parents. *Id.* at 455-56, 583 N.E.2d at 295-96, 576 N.Y.S.2d at 841. The court reasoned:

[t]he issue’s right to inherit from the natural family was severed, however, in 1963 when the Legislature severed the adopted child’s right to so inherit (*see*, Domestic Relations Law § 117 [1][b]). From this, it follows that when the Legislature restored the right of the adopted-out child to inherit from the natural family under the circumstance specified in Domestic Relations Law § 117 (1)(e), it also restored the right of the adopted-out child’s issue to do so.

Id. at 456, 583 N.E.2d at 297, 576 N.Y.S.2d at 841 (citations omitted). The court also made reference to DRL § 117(1)(d), which preserves the inheritance rights of an adopted-out child to take from and through its natural custodial parent. The court noted that although DRL § 117(1)(d) “does not expressly refer to the ‘issue’ of an adopted child . . . it would seem indisputable that the [inheritance] rights of the ‘issue’ would be implicitly preserved in that situation” as well. *Id.* at 458 n.1, 583 N.E.2d at 298 n.1, 576 N.Y.S.2d at 842 n.1 (citation omitted).

¹⁸ *Id.* at 458, 583 N.E.2d at 298, 576 N.Y.S.2d at 842.

through her deceased father under EPTL section 4-1.1.¹⁹

In holding that the issue of an adoptive child qualified as a distributee for purposes of intestacy, the court determined that the surrogate's reliance on DRL section 117(1)(f) was misplaced.²⁰ DRL section 117(1)(f) provides that "[t]he right of inheritance of an adoptive child extends to the distributees of such child and *such distributees shall be the same as if he were the natural child of the adoptive parent.*"²¹ The Court of Appeals stated that this provision did not limit the distributees' right of inheritance to the adoptive family, but rather ensured that the adoptive child's distributees would not be determined with reference to the natural family from which inheritance rights had been severed.²²

The court in *Seaman* briefly addressed the issue of dual inher-

¹⁹ See EPTL § 4-1.1 (McKinney 1981 & Supp. 1993) (governing intestate succession). EPTL § 4-1.1(f) provides that "[t]he right of an adopted child to take a distributive share and the right of succession to the estate of an adopted child continue as provided in the domestic relations law." *Id.* DRL § 117(1)(b) provides that upon the making of an order for adoption, "[t]he rights of an adoptive child to inheritance and succession from and through his natural parents" terminate. DRL § 117(1)(b) (McKinney 1989). However, because Dudley falls under the protection of DRL § 117(1)(e), his inheritance rights are not limited by DRL § 117, but remain governed by EPTL § 4-1.1. *Seaman*, 77 N.Y.2d at 454, 583 N.E.2d at 296, 576 N.Y.S.2d at 840. Under EPTL § 4-1.1(a)(7), where a decedent is survived by "[b]rothers or sisters or their issue, and no spouse, issue or parent," the whole of decedent's estate shall be distributed to such siblings or issue *per stirpes*. EPTL § 4-1.1(a)(7). Dudley, therefore, would be sole distributee and Charlotte would inherit as his issue. *Seaman*, 77 N.Y.2d at 454, 583 N.E.2d at 296, 576 N.Y.S.2d at 840.

The 1992 revision to EPTL § 4-1.1 provided for a similar result. New § 4-1.1(a) provides: "If a decedent is survived by: . . . [I]ssue of parents and no spouse, issue or parent, the whole [estate is] to [be distributed to] the issue of parents, by representation." N.Y. EPTL § 4-1.1(a)(5) (McKinney Supp. 1993).

²⁰ *Seaman*, 78 N.Y.2d at 459-60, 583 N.E.2d at 299, 576 N.Y.S.2d at 843. The Surrogate concluded that the only logical interpretation of DRL § 117(1)(f) prevented the issue of adopted-out children from inheriting from the natural parents of the adopted-out child. *Matter of Seaman*, 144 Misc. 2d at 86, 543 N.Y.S.2d at 253. The Surrogate reasoned that to hold otherwise would extend the statute to relationships not included by the legislature. *Id.* at 86, 543 N.Y.S.2d at 253.

²¹ DRL § 117(1)(f) (emphasis added).

²² *Seaman*, 78 N.Y.2d at 459-60, 583 N.E.2d at 299, 576 N.Y.S.2d at 843. The court's construction of DRL § 117(1)(f) as a method of preventing natural relatives from inheriting through an adopted-out child in intestacy is in accord with previous decisions determining the distributees of an adopted-out child. *See, e.g., Estate of Riggs*, 109 Misc. 2d 644, 440 N.Y.S.2d 450 (Sur. Ct. N.Y. County 1981) (distributees of child adopted pursuant to DRL § 117 are determined from adoptive family); *see also In re Trainor's Estate*, 45 Misc. 2d 316, 256 N.Y.S.2d 497 (Sur. Ct. Bronx County 1965) (holding that natural blood relatives may not inherit or take from adopted-out child); *In re Whitcomb*, 170 Misc. 579, 10 N.Y.S.2d 824 (Kings County Sp. Ct. 1939) (same); *Ryan v. Sexton*, 191 A.D. 159, 181 N.Y.S. 10 (2d Dep't 1920)(same).

itance²³ and concluded that this possibility was a logical consequence of intrafamily adoptions.²⁴ Although dual inheritance has been criticized as giving the adoptive child an advantage over his adoptive siblings,²⁵ the court noted that the legislature had previously addressed these concerns and determined that denial of such inheritance rights would lead to greater injustice in many situations.²⁶

²³ See *Seaman*, 78 N.Y. at 461-62, 583 N.E.2d at 300, 576 N.Y.S. 2d at 844. "Dual inheritance occurs when inheritance through the natural bloodline is not severed, and the adopted child inherits from both adopted and natural family lines." Barbara C. Quissel, Comment, *Adoption—Intestate Succession—The Denial of a Stepparent Adoptee's Right to Inherit from an Intestate Natural Grandparent: In Re Estate of Holt*, 13 N.M. L. Rev. 221, 231-32 (1983). This type of dual inheritance does not give rise to the problems associated with double-dipping, whereby an adoptive child inherits in his adoptive and natural capacity from the same relative. See *infra* note 26.

²⁴ *Seaman*, 78 N.Y.2d at 461-62, 583 N.E.2d at 300, 576 N.Y.S.2d at 844; see also 1986 N.Y. LAW REV. COMM'N REP., *supra* note 2, reprinted in [1986] N.Y. Laws at 2574-75 (McKinney 1986) ("[n]o harm has been evidenced by this and it would be unreasonable to try to prevent this type of occurrence"); 1987 N.Y. LAW REV. COMM'N REP., *supra* note 5, reprinted in [1987] N.Y. Laws at 1940-42 (same).

²⁵ Timothy Hughes, Comment, *Intestate Succession and Stepparent Adoptions: Should Inheritance Rights of an Adopted Child be Determined by Blood or by Law?* 1988 Wis. L. Rev. 321, 343 (1988); see also Jan Ellen Rein, *Relatives by Blood, Adoption, and Association: Who Should Get What and Why: The Impact of Adoptions, Adult Adoptions and Equitable Adoptions on Intestate Succession and Class Gifts*, 37 VAND. L. REV. 711, 725 (1984).

²⁶ *Seaman*, 78 N.Y.2d at 461-62, 583 N.E.2d at 300, 576 N.Y.S.2d at 844. In many intrafamily adoptions, such as stepparent adoptions, the adoptee is not an infant, and therefore some contact between the child and the relinquishing natural parents or relatives typically survives the stepparent adoption. Hughes, *supra* note 25, at 341. In its report on the 1986 amendment to DRL § 117, the Law Revision Commission recognized that complete severance of inheritance rights in such situations may be imprudent. 1986 LAW REV. COMM'N REP., *supra* note 2, reprinted in [1986] N.Y. Laws at 2574-75, 2584-85; 1987 N.Y. LAW REV. COMM'N REP., *supra* note 5, reprinted in [1987] N.Y. Laws 40-42.

The commission pointed out that under present law, the adopted child frequently inherited from both his biological and adoptive family when the adoption occurred after the death of the natural parents or after vested rights had accrued to the adoptive child under instruments executed by natural kindred. *Id.* The commission thought it would be unreasonable to attempt to prevent such an occurrence, noting that it would be unfair to compel an orphaned child to forego his kinship with surviving blood relatives merely because of circumstances over which he had no control. 1986 N.Y. LAW REV. COMM'N REP., *supra* note 2, reprinted in [1986] N.Y. Laws at 2575; see also Rein, *supra* note 25 at 728-29 (demonstrating unjust results of severance of inheritance rights of certain adopted-out children). Additionally, this is not the instance of dual inheritance in which an adoptive child would take twice from the same estate in both his capacity as an adopted child and as a natural child. See *id.* at 725-26. The adoptive child, therefore, would not benefit at the expense of his adoptive siblings and there would be no display of a "covetous nature" which would damage the adoptive child's relations with such siblings. See *In re Benner's Estate*, 166 P.2d 257, 260 (Utah 1946).

It is submitted that the court's decision in *Seaman* was correct and supported by sound analytical reasoning. Since the legislature had expressly preserved the inheritance rights of certain adopted-out children, the only remaining question was whether the issue of such children should be entitled to intestate succession. The Court of Appeals holding follows the Law Revision Commission's consistent recommendations to expand inheritance rights of adopted-out children where appropriate and to equate the treatment of those who inherit under the laws of intestacy with those who inherit through wills and other instruments.²⁷

Thus the inheritance rights of adopted-out children and their issue under the laws of intestacy are now the same as those under the laws of wills and other instruments. Through its decision, the New York Court of Appeals has effectuated the legislative purpose behind the enactment of DRL section 117(1)(e).

Kimberly Roeder

²⁷ Memorandum of the Law Revision Commission Relating to Inheritance Rights of Children Adopted Out of a Class by Persons Related to Them by Blood or by Marriage, [1984] N.Y. LAW REV. COMM'N REP., reprinted in [1984] N.Y. Laws 3050, 3070 (McKinney) [hereinafter 1984 N.Y. LAW REV. COMM'N REP.]; 1986 N.Y. LAW REV. COMM'N REP., *supra* note 2, reprinted in [1986] N.Y. Laws at 2587; 1987 N.Y. LAW REV. COMM'N REP., *supra* note 5, reprinted in [1987] N.Y. Laws at 1930. Because it believed that such a distinction between the law of intestacy and that of wills and other instruments would lead to "objectionable, illogical or inappropriate results," the Law Revision Commission has continually asserted that such difference be eliminated. 1984 N.Y. LAW REV. COMM'N REP., *supra*, reprinted in [1984] N.Y. Laws at 3052; 1986 N.Y. LAW REV. COMM'N REP., *supra* note 2, reprinted in [1986] N.Y. Laws at 2587; 1987 N.Y. LAW REV. COMM'N REP., *supra* note 5, reprinted in [1987] N.Y. Laws at 1930. Discussing the 1986-87 discrimination against adopted-out children who sought to inherit through intestacy, the Law Revision Commission noted that the "primary function of the laws of descent and distribution is to distribute the estates of decedents who die intestate as they would have chosen to do had they anticipated death and executed a will (i.e., to their closest relatives), [and that] the present law in New York fails in its purpose." 1987 N.Y. LAW REV. COMM'N REP., *supra* note 5, reprinted in [1987] N.Y. Laws at 1929. See generally Anne Wiseman French, *When Blood Isn't Thicker Than Water: The Inheritance Rights of Adopted Children in New York*, 53 BROOK. L. REV. 1007, 1011-12 (1988) (providing an overview of the legislative history of inheritance rights of adoptive children).