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Domestic Relations--Adoption: Withdrawl of Consent after Entry of Interlocutory Decree

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In essence, if not in fact, the holdings in *Vale v. United States* and *Chambers v. Maroney* indicated there is a difference between cars and houses so far as the fourth amendment is concerned. They further indicate there need be no patent justification for the distinction.

A. Katherine Gallagher

DOMESTIC RELATIONS — ADOPTION: WITHDRAWAL OF CONSENT AFTER ENTRY OF INTERLOCUTORY DECREE

*In re Adoption of Graves*¹ The Oklahoma Supreme Court recently held that the consent of a child's natural parents to an adoption may be revoked and an interlocutory decree of adoption set aside upon a sufficient showing of fraud, duress and intimidation, notwithstanding a statute rendering that consent irrevocable.²

The natural parents of Lisa Graves filed their consent to the adoption of Lisa by her paternal grandparents. On October 4, 1967, the district court entered an interlocutory decree of adoption in favor of the adoptive parents. On January 19, 1968, the natural parents filed a petition to revoke their consent to the adoption and to vacate the interlocutory decree because of fraud, duress and intimidation on the part of the adoptive parents. The trial court refused to permit introduction of evidence in support of this petition basing its decision on the *Oklahoma Uniform Adoption Act*³ which provides in part:

¹ 481 P.2d 136 (Okla. 1971).

² OKLA. STAT. tit. 10, § 60.10 (1961).

³ Approved by the National Conference of Commissioners on Uniform State Laws in 1953. Oklahoma adopted the Act in 1957 with minor modifications and additions. Montana is the only other state to express its approval of the Act.

Withdrawal of any consent filed in connection with a petition for adoption hereunder shall not be permitted, except that the court, . . . may, if it finds that the best interest of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. *The entry of the interlocutory or final decree of adoption renders any consent irrevocable.* (emphasis added).⁴

The broad pattern of adoption statutes in the United States, disregarding considerable differences of detail, is to make children available for adoption either when their parents consent or when, as a result of certain specified conduct, the parents' rights have been forfeited.⁵ Divergent views have been expressed by the courts as to the effect of a revocation of consent before an adoption is finally approved and ordered by the court. Formerly, the majority rule was that the natural parents had an absolute right to revoke their consent without the necessity of showing a valid cause.⁶ In recent years, however, the trend has been otherwise, and now the majority rule is that the right of withdrawal is within the court's discretion and is dependent upon the various circumstances of each case.⁷ Revocation of consent has been denied by a few courts where the proposed adoptive parents have acted upon the consent by bringing adoption proceedings,⁸ or have taken the

⁴ OKLA. STAT. tit. 10, § 60.10 (1961)

⁵ H. CLARK, *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* §18.4 (1968); *See, e.g.*, OKLA. STAT. tit. 10, §60.6 (1961).

⁶ *See, e.g. In re Anderson*, 189 Minn. 85, 248 N.W. 657 (1933); *Colwell v. Blume*, 456 S.W.2d 174 (Tex. Ct. Civ. App. 1970); *State ex rel. Towne v. Superior Court*, 24 Wash. 2d 441, 165 P.2d 862 (1946).

⁷ *See, e.g., In re Surrender of Minor Children*, 344 Mass. 230, 181 N.E.2d 836 (1962); *In re Mayernik*, 292 S.W.2d 562 (Mo. 1956).

⁸ *Williams v. Pope*, 281 Ala. 416, 203 So. 2d. 271 (1967); *Bailey v. Mars*, 138 Conn. 593, 87 A.2d 388 (1952), *noted in* 26 CONN. B.J. 314 (1952).

child into their custody and care.⁹ A small minority holds that consent, freely and knowingly given, cannot be withdrawn.¹⁰ Oklahoma follows the intermediate theory permitting withdrawal only if the court feels that "the best interest of the child will be furthered thereby".¹¹

The rule is well settled that the natural parents have a right to withdraw their consent *prior* to a final adoption decree where that consent was obtained through fraud, undue influence, coercion or other improper means.¹² Since legal consent means consent freely and voluntarily given, it does not exist when obtained through fraud by the adopting parents.¹³

Graves raised the issue of whether consent could be withdrawn in Oklahoma *after* the entry of an interlocutory decree because of fraud on the part of the adoptive parents. It is a well established rule in other jurisdictions that the natural parents of an adopted child are entitled to have a decree of adoption set aside where the adoptive parents have been guilty of fraud, duress or other overriding practices.¹⁴ Prior to the

⁹ *In re Adoption of a Minor*, 144 F.2d 644 (D.C. Cir. 1944), noted in 20 IND. L.J. 319 (1944-1945); *Lee v. Thomas*, 297 Ky. 858, 181 S.W. 457 (Ct. App. 1944) (adoptive parents cared for child with mother's consent for 15 months).

¹⁰ *Skeen v. Marx*, 105 So. 2d 517 (Fla. Dist. Ct. App. 1958); *In re Simaner's Petition*, 15 Ill. 2d 568, 155 N.E.2d 555 (1959).

¹¹ OKLA. STAT. tit. 10, §60.10 (1961).

¹² *People v. Weihe*, 30 Ill. App. 2d 361, 174 N.E.2d 897 (App. Ct. 1961); *Adoption of McKinzie*, 275 S.W.2d 365, 372 (Mo. Ct. App. 1965) (dictum).

¹³ *Ritchie v. Dillon*, 103 Ga. App. 33, 118 S.E.2d 115 (Ct. App. 1961).

¹⁴ See, e.g., *Meleski v. Havens*, 129 Conn. 238, 27 A.2d 159 (1942) (dictum); *Barber v. Barber*, 280 Ky. 842, 134 S.W.2d 933 (1939); *In re Sladky's Adoption*, 109 Ohio App. 120, 161 N.E.2d 554 (Ct. App. 1958); *Arnold v. Howell*, 98 Cal. App. 2d 202, 219 P.2d 854 (Dist. Ct. App. 1950); *In re Adoption of Shea*, 86 So. 2d 164 (Fla. 1956); *Attacks on Adoption Decrees by Natural Parents to Regain Custody*, 61 YALE L.J. 591, 592 (1952).

passage of the *Uniform Adoption Act* in 1957, this issue had been decided only once by the Oklahoma Supreme Court. In *Laffoon v. Hayden*¹⁵ the natural parents of minor children brought an action to set aside an adoption decree because of fraud and undue influence. The court held:

[A]n allegation that consent to adoption was procured by active fraud of the adoptive parents through misrepresentations made by them to the natural parents, and by undue influence wrongfully exerted by adoptive parents, and that such consent was not voluntary, is sufficient . . . to state a cause of action.¹⁶

Therefore, the central issue in *Graves* was whether the passage of the Uniform Act providing that consent is irrevocable after entry of an interlocutory decree overruled *Laffoon* and barred the natural parents from obtaining revocation of their consent.

In reaching its decision, the court utilized several well known rules of statutory construction. The maxim "Statutes in derogation of the common law are to be strictly construed" has often been applied to adoption statutes.¹⁷ Although the process of adoption was unknown at common law and is governed entirely by statute in the United States,¹⁸ an action for fraud could be enforced as a common law right.¹⁹ The Oklahoma Supreme Court has stated that:

[R]epeals by implication are not to be favored, and that to strike down a valuable right given by a

¹⁵ 337 P.2d 736 (Okla. 1959) (syllabus by the court) (fact occurred prior to passage of *Uniform Adoption Act*.)

¹⁶ *Id.* at 737.

¹⁷ *See, e.g.,* Leonard v. Leonard, 88 Idaho 485, 401 P.2d 541 (1965); Hughes v. Aetna Cas. & Sur. Co., 234 Ore. 426, 383 P.2d 55 (1963).

¹⁸ H. CLARK, *supra* § 18.1, at 603.

¹⁹ Nutt v. Carson, 340 P.2d 260 (Okla. 1959); Jewell v. Allen, 188 Okla. 374, 109 P.2d 235 (1940).

statute and also existing by common law, merely upon an inference to be drawn from a new statute, presents an unhappy manner of adjudicating those rights and holding that they no longer exist.²⁰

While stating that the welfare of the child is not to be ignored, the court has also held that: "[A]doption statute is strictly construed in favor of rights of natural parents when the controversy is between the natural parents and persons seeking to destroy their parental status."²¹

Applying these rules of strict construction, the court in *Graves* refused to hold that the common law action of fraud had been abrogated by the "irrevocability of consent" provision of the *Uniform Adoption Act*. A decisive factor in the court's reasoning was the existence of a limitation of action statute relating to adoption.

In 1953 the Oklahoma legislature enacted the following law:

An action or proceeding which seeks to vacate, cancel or otherwise attack or to avoid a decree of adoption, directly or collaterally, except in the case of extrinsic fraud shall be brought within one (1) year from the date of entry of decree;²²

This provision was not repealed by the *Uniform Adoption Act*, resulting in two apparently conflicting statutes. One would prohibit withdrawal of consent after entry of an interlocutory decree, while the other would permit withdrawal if made within one year.²³

²⁰ *Roxana Petroleum Co. v. Cope*, 132 Okla. 152, 269 P. 1084, 1086 (1928).

²¹ *Conville v. Bakke*, 400 P.2d 179, 186 (Okla. 1965).

²² OKLA. STAT. tit. 12, §95 (1961).

²³ 481 P.2d at 138.

The court in *Graves* concluded that in view of the continued existence of the limitation of action statute after the passage of the *Uniform Adoption Act*, the natural parents could revoke their consent and vacate the interlocutory decree upon a sufficient showing of fraud, duress and intimidation on the part of the adoptive parents, notwithstanding the irrevocability provision.

It is the opinion of this writer that an adoption statute, relating to withdrawal of consent after entry of an interlocutory or final decree, should provide the greatest protection to all the parties concerned—the natural parents, the adoptive parents, and especially the child. *Graves* accomplishes this task by providing that:

(1) The natural parents shall not be denied the opportunity to discharge their duty imposed upon them by natural law, to rear their children, where their consent to an adoption has been obtained by fraud.

(2) The adoptive parents shall not be exposed to the risk of losing custody of their adopted child in the absence of fraud in obtaining the natural parents' consent.

(3) The child shall not be exposed to the danger of establishing lasting bonds of affection with the adoptive parents by the one year limitation of action.

The importance to a child of stability in home life is well recognized. Dangerous psychological effects may result from removing a child from the home of his natural or adoptive parents to which he has become accustomed. The law cannot place love in the hearts of men, nor can it eradicate fraud from their minds. Until this occurs, the child must inevitably suffer.

Boyd Lee Debault