

Workers' Compensation and the Amendment of Alabama's Intestacy Statute

By Sandra Payne Hagood

Many of you may recall reading about the senseless shooting of a clerk at a hotel near the airport on Thanksgiving Day a few years ago. In representing the children of the one of the clerks killed in that shooting in their Workers' Compensation claim, I learned that the 1990 amendments to Alabama's intestacy statute had caused a probably unintended effect on who could be a dependent under Alabama's Workers' Compensation laws.

In this case, the deceased worker, "Tracey," was the natural mother of two minor children who were partially dependent on her for their support. However, because she was very young when her first child was born and because she subsequently developed a drug addiction, Tracey had allowed her own mother, "Carol," to adopt Tracey's two children. Thus, the two children had been adopted by their maternal grandmother. The grandmother filed a Workers' Compensation complaint for death benefits as the children's guardian and next friend.

During her lifetime, Tracey had maintained a close relationship with her children. She made regular visits; she occasionally had them over to spend the night with her; and most importantly, she made significant, if somewhat erratic, financial contributions for their clothing and other needs. Tracey's financial support was a significant contribution to what Carol was able to provide for the children. Carol sought to recover this financial support for the children in their Workers' Compensation claim.

However, Tracey's employer argued that the children could not be her Workers' Compensation dependents because they had been adopted by their grandmother. The employer based its argument on a change made in Alabama's Intestacy Statute effective in 1991. However, we obtained a settlement on behalf of the children by arguing that the same change meant that, if the two children were not Tracey's "children," then they were her *siblings*. In either event, they were Tracey's Workers' Compensation dependents.

The Alabama's Workers' Compensation statute defines "children," in relevant part, as those "entitled by law to inherit as children of the deceased." Ala. Code 1975 § 25-5-1. By defining "children" as those "entitled by law to inherit," the Workers' Compensation statute incorporates Alabama's intestacy statute, Ala. Code § 43848, by reference. Thus, a change in Alabama's intestacy law also potentially changes who can be a Workers' Compensation dependent.¹

In 1990, Alabama's intestacy statute was amended, in relevant part, as follows:

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person . . . [then] [a]n adopted person is the child of an adopting parent and not of the natural parents except that adoption of a child by the spouse of a natural parent has no effect on the right of the child to inherit from or through either natural parent;

Ala. Code § 43848. Thus, under the amended statute, an adopted child is "entitled by law to inherit" only from his adoptive parents and not his natural parents, unless the child has been adopted by a step-parent. At the time of our case, no Alabama court had recognized this change in Alabama's intestacy statute. However, since that time, the Alabama Supreme Court has done so in *Ellis v. West*, 971 So.2d 20 (Ala. 2007) (holding that the unambiguous language of § 43848 means that "an adopted child is not the child of its natural parents 'for purposes of intestate succession' [unless] the adoptive parent is 'spouse of a natural parent.'")

Several Alabama cases prior to the amendment of Ala. Code § 43848 had indicated that a worker's natural children were still his Workers' Compensation dependents in spite of adoption. For instance, in *Ragsdale v. Altec Industries, Inc.*, 456 So.2d 54 (Ala.1984), the Alabama Supreme Court held that every child under the age of 18 is conclusively presumed to be wholly dependent upon its natural parent, even if at the time of death of the parent, the child has been adopted by and is living with adoptive parents. See also, *Central Foundry Co. v. Brown*, 381 So.2d 635 (Ala. Civ. App.1979) (holding adopted child was still workers' compensation dependent of his natural parent).

Even after the amendment of § 43848, Terry Moore's treatise on Alabama Workers' Compensation does not indicate that the rule has changed:

Finally, the adoption of the child by another does not terminate the child's right to inheritance from the natural parents' estate. Accordingly, a child who comes within the conclusive presumption statute can receive death benefits based on a natural parent's death, and, in addition, receive death benefits upon the industrial death of the adoptive parent.

Terry A. Moore, 2 Alabama Workers' Compensation § 18:27 (online edition updated September, 2007) (internal citations omitted).

However, fortunately for the children in this case, under the logic of Ala. Code § 43848, if the two children were not Tracey's

“children” under the Workers’ Compensation law, then they were her *siblings*. Under Ala. Code § 43848, the two children ceased to be their natural mother’s “children” on the day that they were adopted. However, under the same statute, when the children lost their status as Tracey’s children, they became Tracey’s siblings because, by operation of law, Tracey and the two children would now all have the same parent. The intestacy statute legally terminated Tracey’s status as the two children’s mother because of their adoption; but at the same time, it made Tracey and the two children siblings.

As Tracey’s brother and sister, the two children could be entitled to benefits as Tracey’s partial dependents under § 25562. The fact that the two children were Tracey’s siblings by *adoption* rather than by birth would have no impact on their right to claim their status as partially dependent siblings under the Workers’ Compensation statute. *See Bass v. Bass*, 434 So. 2d 280 (Ala. Civ. App. 1982) (natural relationship of grandfather and grandson had no legal effect after the grandfather adopted the grandson as his son). See also, 2 Am. Jur. 2d ADOPTION § 172 (“[T]he policy of adoption statutes is . . . that no legal distinction [be] drawn between adopted children and natural born children once the adoption process is complete, and that the rights and status of an adopted child are the same as those of a natural child.”). Thus, the fact that Tracey was the two children’s natural mother would not bar her from becoming their sister by means of the adoption.

The Workers’ Compensation statute recognizes that a sibling may sometimes contribute significantly to his or her siblings’ financial support, and thus allows for siblings, on a showing of actual dependence, to recover as Workers’ Compensation dependents. Under § 25-5-64, siblings of a worker killed in a job-related accident are “partial dependents” for purposes of Workers’ Compensation benefits. *Mobile Water & Sewer Bd. v. Wilson*, 555 So. 2d 1081 (Ala. Civ. App. 1989); see also, Terry A. Moore, Alabama Workers’ Compensation § 18:28 (Actual Dependency).

Thus, although the children’s adoption by their grandmother caused them to lose their status as Tracey’s *children*, they were still her Workers’ Compensation dependents as her *siblings* because the undisputed testimony indicated that Tracey’s contributions to the children’s mode of living were relied on by the grandmother for the children’s support.

Thus, in this case, a settlement resulted, and the natural children received some Workers’ Compensation benefits. However, if Tracey’s children had been adopted by an unrelated friend, or

by strangers through DHR, then they could have received nothing. It seems unlikely that the legislature intended this result.²

If they did not, an amendment to either Alabama’s Workers’ Compensation code or intestacy statute is needed.³ It seems particularly against the public interest to cut off inheritance rights for children adopted by grandparents because this arrangement is often necessitated by circumstances such as those in this case, and such adoptions should not be discouraged by the legislature.⁴ In the meantime, practitioners need to be aware of this issue when an adoption is involved in a Workers’ Compensation matter. ▲▼▲

Endnotes

1. There is nothing in the legislative history to indicate that, in amending the adoption code, the legislature had any intention of altering the Workers’ Compensation statutes. *See* 1990 Alabama Laws Act 90554. In fact, the legislature seems to have intended to retain the previously existing law followed in *Ragsdale*, 456 So.2d 54 (Ala.1984) and *Central Foundry*, 381 So.2d 635 (Ala. Civ. App.1979) allowing an adopted child to be a workers’ compensation dependent of his natural parent. *See Raley v. Spikes*, 614 So.2d 1017, 1020 n.3 (Ala. 1993).
2. See note 1, *supra*.
3. “[I] do not believe that in enacting ‘ 43848 the legislature intended to disinherit children in the situation presented, . . . [and] I call upon our legislature to consider modifying the exception in ‘ 43848(1) for adoptions by the spouse of a natural parent to include adoptions by relatives, as noted in ‘ 2610A28.” *Ellis v. West*, 971 So.2d 20, 23 (Ala. 2007) (*Cobb, C.J., concurring specially*).
4. “In the past ten years alone, the number of grandparents raising their grandchildren has doubled [according to U.S. Bureau of Census, Current Population Reports (P20-514). Marital Status and Living Arrangements: March 1998 Update. Washing, DC.]. These . . . caregivers provide a vital safety net for vulnerable children who might otherwise be channeled unnecessarily into the foster care system.” *Healthy Ties: Ensuring Health Coverage for Children Raised by Grandparents and Other Relatives: The Results of a National Survey by the Children’s Defense Fund*. Appendix C, p. 115, citing n. 1. <<http://www.childrendefense.org/site/DocServer/healthyties_fullreport.pdf?docID=638>>



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