

CAREFUL CUTTING TOO MANY TIES: ISSUES WITH ESTABLISHING A PARENT-CHILD RELATIONSHIP VIA ADULT ADOPTION IN TEXAS AND A POTENTIAL SOLUTION

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I. ADULT ADOPTION AND INHERITANCE RIGHTS—AN INTRODUCTION

Country singer and songwriter Chris Young sang about his stepdad in a song released in 2006 titled “He’s My Dad.”

I’m 6’4”, he’s 5’10”, still I look up to him, like I did when I was just a kid.
When I’d strike out in little league, he’d sit with mom, and cheer for me.
And he’s been there for me ever since.
He’s more than my stepdad, he’s my Dad.

.....

He taught me what it means to be a man, follow my heart and take a stand.
Cuz of who he is I know who I am today.
I’m his son, cuz he’s the one that makes us family now.
Though we come from different worlds, love makes it work somehow.
We don’t share the same last name don’t look anything alike.

Through the good times, and the bad, he's more than my stepdad,
He's my Dad.¹

Let us pretend for a moment that Chris is twenty. His mother and stepfather are happily married, and his entire family lives in Texas. Chris has done a lot of thinking before leaving his hometown to attend college next fall. He and his stepfather are very close, and his stepfather is the closest thing to a father Chris has ever known. He wants his stepfather to adopt him—he wants to be his stepfather's legal son—so Chris hires an attorney. The attorney puts together the paperwork, which includes a petition for Chris's stepfather to adopt him, signed and consented to by Chris. The judge signs off and it is official: Chris has a new last name. Chris is now his stepfather's legal son.

This story is sweet. This story is not uncommon. This story, unfortunately, has an unexpected ending for Chris. Why? Although this adult adoption process has legalized the relationship he had with his stepfather, under Texas law, Chris has likely severed all legal ties to his biological mother.

This comment seeks to educate the Texas legal community on the 2005 amendment to section 162.507(c) of the Texas Family Code (Family Code) and section 40 of the Texas Probate Code (Probate Code) affecting the inheritance rights of adopted adults in Texas.² Part I explores adult adoption as a whole, including its regulation and growing popularity across the country.³ Part II looks at the technicalities of adult adoption in Texas, both pre- and post-2005 amendment.⁴ Part III considers potential legislative intent behind the amendment and the unintended impact on the more typical adult adoption scenario.⁵ Moving forward, Part IV covers the 2005 amendment from a practitioner's perspective.⁶ Part V suggests a potential solution to the problem by examining solutions from other states and includes a proposed revision to section 162.507(c) of the Family Code.⁷

Primarily, this article's purpose is to draw attention to the complex issue of adult adoption as a means of preventing inheritance issues for families attempting to solidify a parent-child relationship between a

1. CHRIS YOUNG, *He's My Dad*, on I WISH I WAS LYING (Sony BMG 2006), available at <http://www.cowboylyrics.com/lyrics/young-chris/hes-my-dad-30322.html> (last visited Oct. 4, 2012).

2. See TEX. FAM. CODE ANN. § 162.507(c) (West 2011); TEX. PROB. CODE ANN. § 40 (West 2011).

3. See *infra* Part I.

4. See *infra* Part II.

5. See *infra* Part III.

6. See *infra* Part IV.

7. See *infra* Part V; FAM. § 162.507(c).

stepparent and stepchild.⁸ The author's efforts serve to motivate the legislature to make a minor tweak that could resolve the problem entirely.⁹

A. Adult Adoption Is a Matter of State Law

Adult adoption is regulated on a state-by-state basis.¹⁰ Statutes enacted by each state outline the requirements and restrictions, and each statute varies depending on the limitations each state sees fit to impose.¹¹ "States may place limitations on who can adopt or who can be adopted . . ." and even further, states control "[t]he inheritance rights between the adoptee and her adoptive parents, the adoptee and her birth parents, and the adoptee and her adoptive and biological relatives other than the parents."¹² Because states possess such freedom over adoption laws and because there are so many factors upon which states may differ, adoption laws vary widely from state to state.¹³

Common requirements can include the following: consent of the individual to be adopted,¹⁴ proof of specialized relationships,¹⁵ residency,¹⁶ and permission of the adoptor's spouse.¹⁷ While some states impose heavy regulation on the adult adoption process, others place no restrictions at all.¹⁸ It is also worth noting that some states, such as New Jersey, impose restrictions that may be waived if the court finds the adoption to be in the best interest of the adoptee.¹⁹

8. See *infra* Part I–II.

9. See *infra* Part V.

10. See RALPH C. BRASHIER, *INHERITANCE LAW AND THE EVOLVING FAMILY* 160 (Temple University Press 2004) ("[T]he statutes of many states expressly permit the adoption of an adult."); *Adoption*, JUSTIA.COM, <http://www.justia.com/family/adoptions/docs/adoption-law-overview.html> (last visited Oct. 4, 2012) ("Each state has its own adoption laws, which govern the adoption process in their particular jurisdiction.").

11. See BRASHIER, *supra* note 10, at 160–61.

12. *Id.* at 149.

13. *Id.*

14. See, e.g., OKLA. STAT. ANN. tit. 10, § 7507-1.1 (West 2010) ("An adult person may be adopted by any other adult person, with the consent of the person to be adopted . . .").

15. See, e.g., OHIO REV. CODE ANN. § 3107.02 (West 2010) (stating that an adult may be adopted if the adult is "totally or permanently disabled, . . . determined to be . . . mentally retarded . . .," if the adult "had established a child-foster caregiver . . . or child-stepparent relationship" with the adoptor as a child or, at the time of the adult's eighteenth birthday, he was "in the permanent custody of . . . a public children services agency or private child placing agency . . .").

16. See, e.g., WIS. STAT. ANN. § 882.01 (West 2011) ("An adult may be adopted by any other adult, who is a resident of this state.").

17. See, e.g., CONN. GEN. STAT. ANN. § 45a-734 (West 2010) ("A married person shall not adopt a person under the provisions of this section unless both husband and wife join in the adoption agreement . . .").

18. See BRASHIER, *supra* note 10, at 160 ("Some of these statutes place no restriction on adult adoption.").

19. See N.J. STAT. ANN. § 2A:22-2 (West 2010) ("The court, upon being satisfied that the best interests of the person to be adopted would be promoted by granting the adoption, may waive any and all of the above requirements. Every such waiver shall be recited in any judgment of adoption thereafter . . .").

While requirements may vary from state to state, one theme runs throughout: Adopting an adult is much easier than adopting a child.²⁰ There are many more “hoops” for “under-18 adoptions,” including “FBI fingerprint checks, abuse and neglect (legal) checks, [and] medical and financial statement (reviews),” not to mention that “the social worker goes out to your house.”²¹ The number of American children in foster care facilities awaiting adoption grows continuously; however, potential adoptive parents are challenged by more than just a desire for a child.²² The difficulty of adopting a child and of being chosen to adopt a child often weigh heavily on the adoptor’s mind and discourage the process altogether.²³ As a result of these difficulties, “many prospective adoptive parents claim that they cannot find children to adopt in the United States.”²⁴ Unfortunately, “there is no shortage of American children who need permanent homes,” and thus the difficult system has contributed to this result.²⁵

Understanding the difficulty of child adoption sheds light on the ease and availability of adult adoption. The two processes are completely distinct, each with their own requirements and regulations.²⁶ Potential reasons behind the differences could be anything from protecting children by ensuring the right person with the ability to care for the child is chosen to recognizing that adults can make their own decisions about who will adopt them and the qualifications of that individual.

Along with the process and requirements for adult adoption, the intestate rights of adult adoptees are also a matter of state law.²⁷ Those rights typically vary from the rights afforded to adopted minors.²⁸ Many factors influence states’ regulations on the adult adoptee’s inheritance rights, including pre-existing relationships between the parties, the intent or

entered.”).

20. Kathryn Kattalia, *Adult Adoptions Are on the Rise in the U.S.; People Choose New Families, Rather than Biological Ones*, N.Y. DAILY NEWS, June 9, 2011, http://articles.nydailynews.com/2011-06-09/entertainment/29654963_1_adoptive-parents-potential-parents-biological-parents. See also *Adoption*, *supra* note 10 (“Unlike a minor adoption which necessitates the consent of the biological parents of the child, an adult adoption only requires the consent of the person who wishes to be adopted and the adoptive parents.”).

21. Kattalia, *supra* note 20 (quoting David Anderson, “a Seattle attorney who handles adult adoption cases”).

22. See Erika Kleimen, *Caring for Our Own: Why American Adoption Law and Policy Must Change*, 30 COLUM. J.L. & SOC. PROBS. 327, 327–28 (1997).

23. See *id.* at 328.

24. *Id.* at 334.

25. *Id.*

26. Angela Chapvz Foy, *Adult Adoption and the Elder Law*, 8 MARQ. ELDER’S ADVISOR 109, 110 (2006).

27. See BRASHIER, *supra* note 10, at 160–62.

28. *Id.* at 160–61.

motivation behind such adoptions, and potential manipulation of the probate system by means of adult adoption.²⁹

States, considering the potential motivations behind adult adoption (both well-founded and manipulative), have a difficult time defining intestate rights for adult adoptees.³⁰ Because of the “special problems” adult adoption raises, states must strictly scrutinize and draft laws to govern the intestate rights in adult adoption scenarios.³¹

B. Adult Adoption Is on the Rise

As the world and societies within it continue to evolve, so too does the definition of a family.³² Family is arguably the most common institution in the world, “[y]et there appears to be no universal consensus about the definition of the family.”³³ For centuries, adoption has been a socially acceptable and widely used method of legally solidifying a family in the United States.³⁴ In fact, “[s]ince the enactment of the first American adoption statute in 1851, adoption has become socially acceptable and widely practiced.”³⁵ Ultimately, adult adoption has increasingly become a leading way to define and redefine a family for many people across the United States.³⁶

Chuck Johnson, president and CEO of the National Council for Adoption, says adult adoptions in America are occurring more frequently, with common scenarios including adult adoption of former foster children by foster parents and adults estranged from their biological parents who find parent-child relationships with others and want to legally recognize that relationship.³⁷ A constantly growing list of reasons why adults adopt other adults exists, including “obtaining insurance, meeting certain housing

29. *Id.* at 161–62.

30. See Jan Ellen Rein, *Relatives by Blood, Adoption, and Association: Who Should Get What and Why*, 37 VAND. L. REV. 711, 749–54 (1984).

31. *Id.* at 749. See also ADOPTION, *supra* note 10 (noting that “people who would like to establish inheritance rights may choose adult adoption” as a means of achieving that purpose).

32. See generally UNIV. OF WIS.-EXTENSION CTR. FOR EXCELLENCE IN FAMILY STUDIES, BUILDING POLICIES THAT PUT FAMILIES FIRST: A WISCONSIN PERSPECTIVE 1–3 (Mar. 1993), available at http://www.familyimpactseminars.org/s_wifis01report.pdf.

33. See *id.* at 2. See also BRASHIER, *supra* note 10, at 3 (“The term ‘traditional family’ has no universally accepted definition.”).

34. See Lisa A. Fuller, *Intestate Succession Rights of Adopted Children: Should the Stepparent Exception Be Extended?*, 77 CORNELL L. REV. 1188, 1188 (1992).

35. *Id.*

36. See Bill Briggs, *Picking Your Parents: Adult Adoption Creates New Bond*, MSNBC.COM (June 8, 2011, 8:26 AM), http://today.msnbc.msn.com/id/43085435/ns/today-today_health/t/picking-your-parents-adult-adoption-creates-new-bond/#.TmfcdTOVIE. See also Kattalia, *supra* note 20; ADOPTION, *supra* note 10 (noting that “adults who may want to be adopted are stepchildren or foster children over the age of 18 who wish to establish a legal family relationship with their non-biological families”).

37. See Briggs, *supra* note 36.

requirements, facilitating inheritance and estate planning, or simply as a means of solidifying a previously existing, but not legally recognized, family bond.”³⁸ As adult adoption becomes more common, so do opportunities for abuse.³⁹ Legislatures recognized the potential for abuse with adult adoption early on, and it is by no means a new topic of concern.⁴⁰

II. ADULT ADOPTION IN TEXAS

A. Overview

The Family Code expressly permits adult adoption.⁴¹ Statutory language expressly permitting adult adoption first appeared in Texas in 1947.⁴² The 1947 legislation was dense and more complicated than necessary considering the amount of actual litigation involving adult adoption.⁴³ As a result, the legislature repealed the 1947 legislation in 1973 with the enactment of the Family Code, which included a heavily abbreviated section governing adult adoption as compared to that established in 1947.⁴⁴ The legislature amended the section on adult adoption in the Family Code (section 162.507) in 1975, re-codified it in 1995, and amended it again in 2005.⁴⁵

Texas’s current adult adoption provisions span from Family Code sections 162.501 through 162.507.⁴⁶ The statute requires the petitioner to file “a suit to adopt an adult in the district court . . . granted jurisdiction in family law cases and proceedings . . . in the county of the petitioner’s residence.”⁴⁷ Consent by the adopted adult is valid only if it is in writing.⁴⁸ The “petitioner and the adult to be adopted must attend the hearing” to complete the process, although this requirement can be waived for “good cause shown.”⁴⁹ If the court finds that all requirements have been satisfied,

38. Brynne E. McCabe, *Adult Adoption: The Varying Motives, Potential Consequences, and Ethical Considerations*, 22 QUINNIPIAC PROB. L.J. 300, 306 (2009).

39. Andy Soltis, *That’s My Girl: Legal Ploy Shields Assets vs. DUI Suit*, N.Y. POST, Feb. 2, 2012, http://www.nypost.com/p/news/national/that_my_girl_Usfrh7POtas2eSLyGooQZM.

40. Walter Wadlington, *Adoption of Adults: A Family Anomaly*, 54 CORNELL L. REV. 566, 567–68 (1969).

41. See TEX. FAM. CODE ANN. § 162.501 (West 2005).

42. See 9 GERRY W. BEYER, *Texas Practice Series: Texas Law of Wills* § 5.12 (3d ed. 2002).

43. See *id.*

44. See *id.* at § 5.16 (explaining that the 1947 enactment filled almost two pages, and the new provisions were abbreviated to five smaller, more concise sections).

45. See *id.*

46. TEX. FAM. CODE ANN. §§ 162.501–.507 (West 2005).

47. FAM. § 162.502.

48. FAM. § 162.504.

49. FAM. § 162.505.

the adoption is granted.⁵⁰ Once the adoption is granted, the adult becomes the legal son or daughter of the adoptive parent or parents.⁵¹

Finding a fit for adult adoptees is difficult in many settings. Whether it involves interpreting a will or trust, or applying intestacy statutes, determining the rights of an adopted adult is not a simple task. In the 1984 case of *Lehman v. Corpus Christi National Bank*, the Supreme Court of Texas had to determine “whether Randy Lehman, an adopted adult, qualify[ed] as a ‘descendant’ of Melvin Lehman, his adoptive father”⁵² Melvin adopted Randy, the son of his wife from a previous marriage, when Randy was twenty-six years old.⁵³ Melvin’s will defined descendants as “the children of the person designated, and the issue of such children, and such children and issue shall always include those who are adopted.”⁵⁴ The court looked to the testator’s intent and determined that Melvin’s intent was to include Randy as a descendant, thus entitling Randy to inherit from his estate.⁵⁵ While there was no need to go outside the contents of the will in this scenario, the court also emphasized that people modify intestacy statutes by will; thus, the court need only look to the intestacy statutes if the will is not clear as to intent.⁵⁶

Texas treats adult adoptees the same as adopted minors for purposes of wills and trusts.⁵⁷ Texas considers adopted adults descendants for purposes of inheritance through wills, wherein the testator uses the term descendants to annunciate those persons receiving inheritance.⁵⁸ In 2008, however, Texas clarified the presumption that while including adopted adults within the definition of descendant for wills and trusts purposes, evidence may rebut the presumption of such inclusion as being contrary to the testator’s intent.⁵⁹

In 2008, the Fourth District Court of Appeals in San Antonio decided the case of *In re Ray Ellison Grandchildren Trust*.⁶⁰ This case was a true soap opera involving a wealthy grandfather (Ray Ellison Sr.), a son (Ray Ellison Jr.), a divorce (between Ray Ellison Jr. and his wife, with whom he had two children, Arleene and Darleene Ellison), another marriage (again

50. FAM. § 162.506(a).

51. FAM. § 162.507(a).

52. *Lehman v. Corpus Christi Nat’l Bank*, 668 S.W.2d 687, 688 (Tex. 1984).

53. *Id.*

54. *Id.*

55. *See id.*

56. *See id.* at 689 (also noting that when the case was decided in 1984, adult adoptees were “to be treated as natural children ‘for every purpose;’” thus, looking outside the will to the intestacy statutes would not have had a significant impact on the outcome).

57. 9 BEYER, *supra* note 42 (“Adopted adults have been held by the Texas Supreme Court to be included in the word ‘children’ in both trusts and wills.”).

58. *See Lehman*, 668 S.W.2d at 687.

59. *See In re Ray Ellison Grandchildren Trust*, 261 S.W.3d 111, 121 (Tex. App.—San Antonio 2008, pet. denied).

60. *See id.* at 111.

involving Ray Ellison Jr.), and three step children (Aaron, Jeffrey, and Mark Lindner).⁶¹ The problem arose when Ray Ellison Jr. adopted Aaron, Jeffrey, and Mark Lindner, all adults at the time of adoption.⁶² Upon distribution of Ray Ellison Sr.'s trust, a family feud began over whether the Lindners were considered descendants and thereby entitled to a portion of the trust.⁶³ Arleene and Darleene Ellison alleged that their father's adoption of the Lindners was a sham to get the Lindners a share of the trust rather than to establish a legal, parent-child relationship.⁶⁴ In making its decision, the court looked at three things: (1) the language of the trust and the statute governing adult adoption at the time the trust was established, (2) the testator's intent, and (3) the policy behind the statute.⁶⁵ Upon evaluation of those three concerns, the court decided that the Lindners were not descendants and thus were not entitled to a share of the trust.⁶⁶

While there is a lack of case law regarding the adoption of adults and intestacy rights that attach when such a relationship is solidified, both *Lehman* and *In re Ray Ellison* demonstrate that adult adoption carries with it unique issues—issues arising from trouble interpreting, proscribing, and applying rules of inheritance and intestacy to the parent-adopted adult relationship.⁶⁷ From both cases, we also learn that while a will or a trust is a means of taking intestacy law into your own hands and deciding for yourself how your estate is distributed, it is often necessary to look outside the four corners of those documents to determine the testator's intent.⁶⁸ When that need arises, it is important to understand the statutes and how they operate.

B. Intestacy Rights of Adopted Adults in Texas

Adult adoption in Texas has a unique history and development. The concept did not appear in Texas statutes until 1947.⁶⁹ Prior to 1947, the statutes pertaining to adopted minors loosely governed the rights of adopted

61. *See id.* at 114–15.

62. *Id.* at 115.

63. *See id.*

64. *See id.*

65. *See id.* at 117–24. One of the Ellisons' contentions was policy based. *See id.* at 115. Arleen and Darleene Ellison claimed that "wrongful use of the adult adoption statute to divert Trust assets to individuals who would otherwise have no colorable claim or right to those assets" should be "estopped," and that coming to court without "clean hands" to make fraudulent claims based on fraudulent schemes should be barred. *See id.*

66. *See id.* at 126 ("Thus, by using the 1975 statute as a constructive aid, we conclude that when Ray Ellison Sr. created the Trust in 1982, he did not intend the term 'descendants' to include those persons adopted as adults.").

67. *See id.* at 123–26. *See also* *Lehman v. Corpus Christi Nat'l Bank*, 668 S.W.2d 687, 688 (Tex. 1984).

68. *See In re Ray Ellison Grandchildren Trust*, 261 S.W.3d at 111–26; *Lehman*, 668 S.W.2d at 670–88.

69. *See In re Ray Ellison Grandchildren Trust*, 261 S.W.3d at 122.

adults.⁷⁰ Until 1931, adopted adults had a legal right only to the inheritance from the adoptee's estate.⁷¹ This meant the adoptee could inherit only from the adoptive parents, not through them (meaning not from the family of the adoptive parents, such as a grandmother), and not from the biological parents or through them.⁷² In 1931, the legislature made a few changes.⁷³ It adopted a statute that allowed adopted minors to inherit "from their adoptive parents *but not through them*; that is, they could not inherit from one who was a 'stranger to the adoption.'"⁷⁴

This provision was known as the "stranger to the adoption rule."⁷⁵ It operated something like this: if Harry and Charlotte, our hypothetical adoptive parents, adopted Lilly, a seven-year-old girl, Lilly would have the rights to inherit from Harry and Charlotte but not *through* them.⁷⁶ This meant that for Lilly, her inheritance stopped at Harry and Charlotte, and she would not have any rights to the estate of Harry or Charlotte's parents.⁷⁷ Because no other rule existed specifically addressing adult adoption, this rule also governed the rights of adopted adults until 1947.⁷⁸

As noted above, the legislature enacted a statute expressly related to adult adoption in 1947.⁷⁹ "[T]he stranger to the adoption rule applied to this 1947 statute providing that those adopted as adults will 'be deemed and held to be, *for every purpose, the child of [his] parent or parents by adoption as fully as though born of them in lawful wedlock.*'"⁸⁰ Four years later, the legislature "abrogated the stranger to the adoption rule with respect to those *adopted as minors.*"⁸¹ This meant that Lilly, from the hypothetical above, could now inherit through her parents, Harry and Charlotte, as if they were her biological parents. The legislature did not extend the amendment abrogating the stranger to the adoption rule to the adoption of adults.⁸²

With the enactment of the Family Code in 1973, the legislature codified the inheritance rights of adopted adults.⁸³ Section 16.55, titled "Effect of Adoption Decree[.]" mandated that "the adopted adult [was] the son or daughter of the adoptive parents, and of the natural parents, for

70. *See id.*

71. *Id.*

72. *See id.* at 123.

73. *See id.* at 121–22.

74. *Id.* at 122.

75. *See id.*

76. *See id.*

77. *See id.*

78. *See id.*

79. *See supra* Part II.A.

80. *See In re Ray Ellison Grandchildren Trust*, 261 S.W.3d at 122 (citing Act of 1947, 50th Leg., R.S., ch. 428, 1947 Tex. Gen. Laws 1009).

81. *Id.* at 123.

82. *Id.*

83. *Id.*

inheritance purposes.”⁸⁴ This broad grant of inheritance rights was limited in 1975 when the legislature restricted inheritance rights as follows: “On entry of the decree of adoption, the adopted adult is the son or daughter of the adoptive parents *for all purposes*, and of the natural parents for inheritance purposes only.”⁸⁵

In 1995, adult adoption was re-codified and became section 162.507 in the Family Code.⁸⁶ The section titled “Effect of Adoption” read as follows:

(a) The adopted adult is the son or daughter of the adoptive parents for all purposes.

(b) The adopted adult is entitled to inherit from and through the adopted adult’s adoptive parents as though the adopted adult were the biological child of the adoptive parents.

(c) The adopted adult retains the right to inherit from the adult’s biological parents.

However, a biological parent may not inherit from or through an adopted adult.⁸⁷

This was consistent with the inheritance rights afforded to adopted minors in Texas at the time (and still today).⁸⁸ Under the 1996 version of the statute, adopted adults could inherit from both biological and adoptive parents.⁸⁹ Looking back at Chris Young’s story from the introduction, we will evaluate how this statute operated.⁹⁰

In our hypothetical, Chris, at age twenty, decides to have his stepfather adopt him.⁹¹ Under section 162.507, as it read prior to 2005, Chris would be considered the son of his stepfather for all purposes.⁹² He would inherit from and through his stepfather, meaning he would be entitled to the estate of his stepfather as well as qualify for any inheritance as his stepfather’s issue (e.g., Chris’s share of the estate of his step-grandfather).⁹³ On top of those rights, Chris would also still be able to inherit from his biological parents.⁹⁴ For Chris, this would be his mother, who is married to his now adoptive father, but also his biological father, to whom he is no longer legally related.

84. *Id.* (citing Acts of 1973, 63d Leg., R.S., ch. 543, § 16.55, 1973 Tex. Gen. Laws 1411).

85. *See id.* at 123–24 (citing Acts of 1975, 64th Leg., R.S., ch. 475 § 43, 1975 Tex. Gen. Laws 1253, 1270).

86. *See* TEX. FAM. CODE ANN. § 162.507(a)–(c) (West 1996).

87. *Id.*

88. *See* TEX. FAM. CODE ANN. § 162.017 (West 1996).

89. *See* FAM. § 162.507(a)–(c).

90. *See supra* Part I.

91. *See supra* Part I.

92. *See* FAM. § 162.507(a).

93. *See* FAM. § 162.507(b).

94. *See* FAM. § 162.507(c).

This was the state of adult adoption legislation until 2005. In 2005, the 79th Legislature amended section 162.507(c), which was incorporated into section 40 of the Probate Code, to strip adopted adults of their rights to inherit from their biological parents.⁹⁵ The relevant changes to section 162.507(c) of the Family Code were as follows: “The adopted adult may not inherit from or through the adult’s biological parent. A biological parent may not inherit from or through an adopted adult.”⁹⁶ The Probate Code was also amended to be subject to the revised section 162.507(c).⁹⁷ After the amendment, the statute read as follows: “The natural parent or parents of such child and their kin shall not inherit from or through said child, but, except as provided by Section 162.507(c), Family Code, the child shall inherit from and through its natural parent or parents.”⁹⁸

This change has a significant impact on the inheritance rights of adopted adults.⁹⁹ Professor Gerry Beyer identified this issue in 2006, writing:

The Texas 2005 Legislature made a significant change with respect to the law governing inheritance by a person who is adopted as an adult. Under prior law, there was no difference between the inheritance rights of a person who was adopted as a minor and a person who was adopted after reaching adulthood; that is, both types of adopted individuals inherited not only from their adoptive parents but also retained the right to inherit from their biological parents. With regard to intestate individuals who die on or after September 1, 2005, the adopted adult may no longer inherit from or through his or her biological parent.¹⁰⁰

Beyer further noted that “[t]his amendment may lead to an absurd result.”¹⁰¹ What result does he mean? If we apply the amended statute to Chris, our hypothetical twenty-year-old adult adoptee, his inheritance rights change. Under section 162.507(c), Chris may no longer inherit through a biological parent; thus, while Chris may still inherit from his adoptive father, Chris may no longer inherit from or through his biological mother, even though she is still married to his adoptive father.¹⁰² Because Chris’s biological mother did not join in the petition for Chris’s adoption, for the obvious reason that he is her biological son, he no longer has any standing to inherit from her via intestate law.¹⁰³

95. *Id.*

96. *Id.*

97. TEX. PROB. CODE ANN. § 40 (West 2005).

98. *Id.*

99. See Gerry W. Beyer, *Wills and Trusts*, 59 SMUL. REV. 1603, 1606 (2006).

100. *Id.*

101. *Id.* at 1607.

102. See *id.* at 1606.

103. See *id.* Beyer offers the following hypothetical demonstrating the application of the amended section 162.507(c):

This is clearly an absurd result. Why should Chris's stepfather's decision to adopt Chris change Chris's legal relationship with his biological mother? What happens if Chris and his family never discover this change? What if Chris's biological mother does not leave a will? All of these questions go directly to the main issue we are trying to fix, which is how to deal with the 2005 amendment to section 162.507(c).

III. RATIONALE AND IMPACT OF THE 2005 AMENDMENT REGARDING ADULT ADOPTION

A. Possible Legislative Intent

Through adult adoptions, adults can essentially choose their own parents.¹⁰⁴ Although we often call them by the same name, in most cases, child adoption and adult adoption are two very different things.¹⁰⁵ While some adult adoptions involve the solidification of a parent-child relationship, a multitude of other creative uses for adopting an adult exists.¹⁰⁶ Often people use adult adoption for questionable and unusual purposes.¹⁰⁷ Texas is not the only legislature concerned with the "manipulation" of intestate rights by means of adult adoption.¹⁰⁸ "Legislatures and courts often seek to prevent adoptors and adult adoptees from using adoption as a tool to manipulate inheritance rights *through* each other to reach the estates of *third* parties."¹⁰⁹ Texas, like many other states, was likely seeking to deter such manipulation when the Texas Legislature enacted the 2005 amendment.

One unusual use of adult adoption the Texas Legislature might have been trying to prevent is spousal adoption.¹¹⁰ With spousal adoption, "one spouse . . . adopts the other spouse in an attempt to manipulate inheritance rights from third parties, either under intestate succession laws or laws pertaining to class gifts."¹¹¹ Surprisingly, this trend is growing in

This amendment may lead to an absurd result. For example, assume that Mother and Father have a child in 1985. Mother dies in 1990 and Father marries Step-Mother in 1995. As time passes, Child and Step-Mother become close, and shortly after Child reaches age eighteen, Step-Mother adopts Child. If Father dies intestate, Child will not be considered an heir because the statute provides that an adopted adult may not inherit from a biological parent. *Id.* at 1607. Beyer's hypothetical depicts the same situation Chris faces and demonstrates the frequency with which this situation occurs. Like Chris, "Child" in Beyer's hypothetical has fallen victim to the legislature's oversight when it drafted the 2005 amendment to section 162.507(c) of the Family Code.

104. See Kattalia, *supra* note 20.

105. See McCabe, *supra* note 38, at 302.

106. See *id.* at 306–14.

107. See *id.* at 302.

108. See *id.* at 313.

109. BRASHIER, *supra* note 10, at 161.

110. See *supra* text accompanying notes 105–07.

111. BRASHIER, *supra* note 10, at 162.

popularity.¹¹² Reasons for such adoption can include guaranteeing inheritance rights from the adoptor, preventing relatives from having standing to challenge the adoptor's will or trust, or establishing the adoptee as a member of a class of trust beneficiaries.¹¹³

While the incest laws of some states act as a preventative measure by discouraging couples from adopting their spouses to accomplish one of the aforementioned goals, "there are precious few reported cases of actual prosecutions for incest in adult adoption situations."¹¹⁴ By cutting off the adult adoptee's right to inherit from his or her biological parent, the Texas Legislature may have been seeking another deterrent with the 2005 amendment.

Another type of manipulation the Texas Legislature may have sought to prevent is homosexual partner adoption. As explained by Joan H. Hollinger:

Homosexual couples who are barred from using marriage laws to achieve legal recognition of their relationships have tried, typically without success, to use the adoption laws to achieve legal status as a family. The overt efforts by some adults to adopt their homosexual lovers have been rebuffed by courts for violating the fundamental goal of adoption laws, which is to create genuine parent-child relationships, not to circumvent the marriage laws.¹¹⁵

Homosexual couples are also motivated to adopt their spouses for the same reasons as heterosexual couples—control of inheritance rights that might otherwise be out of their hands.¹¹⁶ This may seem far-fetched at first, but it is not all that new or unheard of. In 1999, a news story out of Florida told of a suit involving Sylvia Rickard, the niece of W. Donald Blackwell, a wealthy and allegedly homosexual man, who at age eighty-eight adopted his seventy-two-year-old partner Gordon McKesson.¹¹⁷ The article reported that "Rickard's attorney contend[ed] that Blackwell, of Delray Beach, went through with a sham adoption to circumvent a clause in the family's 1932 trust fund that would not have allowed McKesson to inherit the money after

112. See Terry L. Turnipseed, *Scalia's Ship of Revulsion Has Sailed: Will Lawrence Protect Adults Who Adopt Lovers to Help Ensure Their Inheritance From Incest Prosecution?*, 32 HAMLINE L. REV. 95, 95–96 (2009).

113. *Id.* at 97.

114. *Id.* at 98.

115. JOAN HEIFETZ HOLLINGER, 1-1 ADOPTION LAW AND PRACTICE § 1.05(1)(f) (Matthew Bender, 1988). See also Peter N. Fowler, *Adult Adoption: A "New" Legal Tool for Lesbians and Gay Men*, 14 GOLDEN GATE U. L. REV. 665, 669–70 (1984); Andy Orsono, *Adult Adoption: A Comparison of New York and California Law*, 11 J. CONTEMP. LEGAL ISSUES 617, 618 (1997).

116. Turnipseed, *supra* note 112, at 97–98.

117. John Burnstein, *Niece Can Challenge Adoption, Court Says*, SUN SENTINEL, Dec. 28, 2000, http://articles.sun-sentinel.com/2000-12-28/news/0012280117_1_trust-fund-adoption-mr-blackwell.

Blackwell's 1997 death."¹¹⁸ Rickard's attorney spoke out about homosexual adoption and its ability to manipulate, saying that "[t]ypically, an adoption creates some sort of parent-child relationship. . . . Adoptions are not meant for the sole purpose of letting a person inherit a trust fund."¹¹⁹ It is likely that one goal of the 2005 amendment was to put to rest the fear of homosexual couples adopting one another to establish intestate rights to one another's estates mirroring those rights possessed by heterosexual married couples.¹²⁰ Perhaps the legislature intended for the loss of one's own intestate rights to his or her biological parents to deter this unusual use of adult adoption.¹²¹

Adoption is often used as a means of "manipulating" property left in a trust because "trust fund beneficiaries who do not have children of their own may be able to use adult adoption to steer trust funds to the person of their choice, rather than have the money go to their siblings, the children of their siblings or other relatives."¹²² We saw allegations of similar fraudulent "manipulation" in *In re Ray Ellison Grandchildren Trust*.¹²³ Trust fund disputes arising from adult adoptions lead to complex legal disputes over the testator's true intent and the proper interpretation of the language used in the trust.¹²⁴ The only means of avoiding disputes over adult adoptees and their rights to inherit from trusts established for those the testator might label as "descendants" or "grandchildren" is for the testator to include an express clause excluding or including adopted adults.¹²⁵ In fact, the testator may need to go even further and clarify whether there must be a particular relationship between the adoptor and the adoptee.¹²⁶ Because such intricate details might be overlooked or unforeseen to a testator, attempts to "manipulate" the language and complex legal disputes are bound to happen.¹²⁷

118. *Id.*

119. *Id.* "Rickard's lawsuit seeks to have the adoption thrown out by arguing that Blackwell and McKesson used it as 'a quasi-matrimonial vehicle to provide non-married partners' with legal standing for their relationship. The case also alleges that Blackwell was a homosexual and couldn't adopt McKesson under Florida law." *Id.*

120. BRASHIER, *supra* note 10, at 162.

121. *See* TEX. FAM. CODE ANN. § 162.507(c) (West 2008).

122. *Adult Adoption as an Estate Planning Tool*, LAWYERS.COM, <http://trusts-estates.lawyers.com/estate-planning/Adult-Adoption-as-an-Estate-Planning-Tool.html> (last visited Oct. 25, 2012).

123. *See generally In re Ray Ellison Grandchildren Trust*, 261 S.W.3d 111 (Tex. App.—San Antonio 2008, pet. denied).

124. *See* Debra Cassens Weiss, *Adult Adoptions Generate Legal Disputes Over Trust Rights*, ABA JOURNAL (May 21, 2009), http://www.abajournal.com/news/article/adult_adoptions_generate_legal_disputes_over_trust_rights/.

125. *See generally id.* (arguing that further explanation and inclusion could alleviate the problem).

126. *See id.*

127. *See id.*

Most recently, a man used adult adoption as a means of protecting property in the wake of a wrongful death lawsuit.¹²⁸ John Goodman is a wealthy resident of Florida currently facing a wrongful death lawsuit filed by the parents of a boy who Goodman killed in 2010 when he ran a stop sign while driving intoxicated.¹²⁹ He recently adopted his “42-year-old girlfriend as a daughter in a move critics say will protect [his] assets during [the] upcoming lawsuit”¹³⁰ While Goodman claims the lawsuit had nothing to do with the adult adoption of his girlfriend, attorneys and commentators claim it could protect the assets he had not yet set aside in a trust for his two biological children by ensuring his girlfriend—now adopted child—is entitled to a piece of his estate as well.¹³¹ The adoption has yet to be challenged, but it did catch attorneys and judges off guard.¹³² One attorney has commented that it is a manipulation of the state’s adoption law, “which is designed to create parent-child relationships.”¹³³

While these sorts of unusual activities are disconcerting, they are also sensational. Rare cases involving these types of manipulation make it into the spotlight for being peculiar and creative, but they are the exception, not the norm. The norm is the more typical scenario of the solidification of a parent-child relationship, like the adoption of a spouse’s child by a stepparent.¹³⁴ Attorney Sharlann Roe, whose practice is focused mostly on family, estate planning, and probate law, explained in her interview that in the more than thirty years she has practiced law, she has only encountered adult adoption maybe a half dozen times.¹³⁵ She elaborated by noting that each time it was used in a more traditional sense, such as solidifying a relationship between stepparent and stepchild.¹³⁶ Similarly, Attorney Walter Wm. Hofheinz, Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law, reports that he has not encountered adult adoption one time in the thirty-two years he has been in practice but believes the frequency with which people use the adult adoption laws for unusual purposes is so low that the change is almost pointless.¹³⁷

128. *Man Adopts Girlfriend: John Goodman's 'Daughter' Could Protect Assets in Wrongful Death Lawsuit*, HUFFINGTON POST, Feb. 3, 2012, http://www.huffingtonpost.com/2012/02/01/man-adopts-girlfriend-_n_1247607.html.

129. *Id.*

130. *Id.*

131. *See id.*

132. *See id.*

133. *Id.*

134. Telephone Interview with Sharlann M. Roe, Attorney at Law, Law Office of Sharlann M. Roe (Oct. 26, 2011).

135. *See id.*

136. *See id.*

137. E-mail interview with Walter Wm. Hofheinz, Law Office of Walter Wm. Hofheinz (Jan. 7, 2012) (on file with author).

B. Effects of the Amendment

If deterrence of the types of manipulation mentioned in the preceding section was in fact the goal of the legislature then we can assume, because little case law or commentary on the subject exists, that it has—and will—deter those considering the option for manipulative purposes. But, because the amendment is a recent change, there is also no way of knowing how many times families undergoing adult adoption have unknowingly terminated intestate rights they did not even know were involved or at risk.

The potential of losing one's inheritance rights to one's biological parents would logically be influential in that person's decision to go through with adult adoption, but what about people pursuing a more traditional goal? What about people intending to use adult adoption as a means of establishing a legal, parent-child relationship? A 2009 story from Iowa City, Iowa, tells of a ninety-three-year-old man adopting a sixty-four-year-old man he had raised as an unofficial part of the family since the man showed up on his doorstep at age fourteen.¹³⁸ While our focus is Texas, the Iowa story is a relevant example an adoption scenario not intended to manipulate but to establish a legitimate parent-child relationship.¹³⁹

IV. FROM A PRACTITIONER'S STANDPOINT

"One of the hardest things about practicing law is remembering what the latest version is."¹⁴⁰ It goes without saying that attorneys should keep themselves abreast of changes made to codes and laws that directly affect their practice areas. In situations when the attorney is dealing with an area of law in which the attorney does not often practice or specialize, it is safer to simply refer to the code before proceeding with the case.¹⁴¹ It is likely that the problem slips under the radar, especially with technology and the increasing amount of "form practice" that tends to arise when attorneys are dealing with unfamiliar territory, such as adult adoption.¹⁴²

The current statute enacts a punishment that does not necessarily address the targeted problem and leaves practitioners to create unique ways to deal with the amendment—ways that avoid severing ties between the biological parent and adoptee.¹⁴³ For example, Ms. Roe includes in her adoption decrees "that the inheritance tie with the biological parent is not

138. *Man, 93, Adopts 64-Year-Old Man*, KCRG-TV9 (Dec. 7, 2009, 3:35 PM), <http://www.kcrg.com/news/local/78708997.html>.

139. *See id.*

140. Roe, *supra* note 134.

141. *See id.* (indicating that when dealing with an area of law the attorney does not practice regularly, it is important to look to the code sections for guidance and small details that might otherwise be overlooked).

142. *See id.*

143. *See id.*

severed.”¹⁴⁴ The addition of such language goes directly against the statutory provisions regarding adult adoption in both the Family Code and the Probate Code.¹⁴⁵ Ms. Roe explained that from her experience, most judges will accept and sign off on decrees containing such provisions because they see similar language in the more common child adoption scenarios, which typically include provisions severing or preserving inheritance ties with the child’s biological parent.¹⁴⁶ A challenge may exist for this addition in the future; however, Ms. Roe hypothesized that the odds are that either the statute of limitations will lapse or else, “short of Howard Hughes’s estate,” it will be a non-issue.¹⁴⁷

Mr. Hofheinz never personally handled or encountered problems with the amendment to section 162.507(c); however, he offered his opinion on the change along with potential solutions for the problem.¹⁴⁸ Mr. Hofheinz compared the adult adoption statute to the child adoption statutes and shared the following:

I think the rule should be the same for children and adults; I would probably tend for children toward a no inheritance from the biological parent after termination and adoption (not the current rule), and therefor[e] the same for adults. I think there is a stronger argument for no rights for children, and no termination of rights for adults since the transaction is consensual.¹⁴⁹

Further, Mr. Hofheinz indicated that the formal process requirements for adult adoption, such as court proceedings, will likely deter any unusual uses for adult adoption mentioned in Section III, Part A.¹⁵⁰ He also added that “potentially penalizing the recipient makes no sense; both parties must agree to an adult adoption.”¹⁵¹

Ms. Roe, Mr. Hofheinz, and other family law, estate planning, and probate attorneys will continue to work with the statutes handed down by the Texas legislature to achieve the best results for their clients. The legislature left the problem for attorneys to address themselves and while this may work for a short time, a need exists to correct some issues before they snowball into a much larger problem down the road.

144. *See id.*

145. *See id.* *See also* TEX. FAM. CODE ANN. § 162.507(c) (West 2011); TEX. FAM. CODE ANN. § 40 (West 2011).

146. *See* Roe, *supra* note 134. *See also* FAM. § 162.507(c); FAM. § 40.

147. *See* Roe, *supra* note 134. *See also* FAM. § 162.507(c); FAM. § 40.

148. *See* Hofheinz, *supra* note 137.

149. *Id.* (alteration in original).

150. *See id.*; *supra* Part III.A.

151. Hofheinz, *supra* note 137.

V. A POTENTIAL SOLUTION FOR STATUTORY PROVISIONS REGARDING ADULT ADOPTION AND PARENT-CHILD RELATIONSHIPS IN TEXAS

The issues mentioned in Section III, Part A are important concerns that pose a serious potential for manipulation that legislatures wanted to prevent.¹⁵² As briefly mentioned above, the technical steps for executing an adult adoption in Texas are relatively simple.¹⁵³ What is not so simple is sorting out the adoption's impact on the inheritance rights of the adult adoptee. It is important to remember that probate rules should be "simple, objective, and efficient, and should provide consistent and predictable patterns of distribution."¹⁵⁴ Predictability is important. Predictability allows probate courts to more easily distribute an estate; it allows attorneys and their clients to use and apply the rules with confidence that their decisions and choices will accomplish their goal.¹⁵⁵ This message was reinforced by Mr. Hofheinz, who indicated a preference for one rule, stating that "[o]ne rule should apply; certainty is a strong policy consideration for me."¹⁵⁶

As blended families become more prominent in America, so too does stepparent adoption.¹⁵⁷ The amendment to section 162.507(c) has compromised the predictability of the adult adoption statute in Texas with regard to stepparent adoption of an adult.

A. Solutions in Place in Other States

In complex matters such as this, it is often beneficial to look to other jurisdictions for guidance. Because adult adoption is a matter of state law, a variety of solutions to this problem may be found in the statutes of other states.¹⁵⁸ When assessing other states' laws regarding inheritance rights of adult adoptees, it is easy to revert back to the childhood tale of Goldie Locks and the Three Bears—one is too big, one is too small—only it is a bit harder to find one that is just right.

Louisiana statutes specifically address the issue of inheritance rights when a stepparent adopts an adult stepchild.¹⁵⁹ In 2008, Louisiana added section 461, titled "Effect of Adoption by Stepparent[,]" to its family code.¹⁶⁰ This section lays out an explicit inheritance exception for adult adoption by a stepparent and reads as follows:

152. See *supra* Part III.A.

153. See *supra* text accompanying notes 46–51.

154. BRASHIER, *supra* note 10, at 6.

155. See *id.*

156. See Hofheinz, *supra* note 137.

157. BRASHIER, *supra* note 10, at 153.

158. See *supra* Part I.A.

159. See LA. REV. STAT. ANN. § 9:461 (2008).

160. *Id.*

[I]f the adoptive parent is married to a parent of the adopted child at the time of the adoption or was married to a parent at the time of the death of the parent, the relationship of that parent and his relatives to the adopted child shall remain unaltered and unaffected by the adoption.¹⁶¹

Contrastingly, the Vermont Legislature included adult adoption by a stepparent in the same provision as adoption of a minor by a stepparent.¹⁶² Vermont indicates that an adult who is adopted by a stepparent has the same rights as a minor who is adopted by a stepparent, meaning the adult retains the inheritance rights from his biological parent who is the spouse of the stepparent adopting the adult.¹⁶³

Other states, such as New Jersey, handle the situation more broadly.¹⁶⁴ New Jersey separates adult adoption into its own chapter titled “Adoption of Adults” and further separates the inheritance rights of adopted adults into a section titled “Effect of Adoption; Inheritance.”¹⁶⁵ This section handles inheritance rights of adopted adults more generally: “The right of the person adopted, and of such persons as legally represent him on his death, to take and inherit intestate personal and real property from his natural parents and their kindred shall not be altered by the adoption.”¹⁶⁶ New Jersey does not limit the inheritance rights to stepparent adoptions only; rather, it chooses not to discriminate by type, allowing all adopted adults to maintain their inheritance ties to their biological families.¹⁶⁷

Whether a state chooses to reserve an entire chapter or section in its family or probate code to provide for adult adoption rights and regulations, or simply include a provision within a more general chapter or section focusing on adoption generally, the best method of laying out the inheritance rights of adopted adults within a code is where this section best fits logically and organizationally. Part B of this section will evaluate how the Family Code organizes the inheritance rights of adopted adults and will propose a means of tweaking a tiny portion of those rights while avoiding a complete disruption of the current code’s organization and structure.¹⁶⁸

161. *Id.*

162. *See* VT. STAT. ANN. tit. 15A, §§ 4-102, 5-102 (West 1995).

163. *See id.*

164. *See* N.J. STAT. ANN. § 2A:22-3 (West 2011).

165. *Id.*

166. *Id.*

167. *See id.*

168. *See infra* Part V.B.

B. Dear Legislature

“The ways we construct our families continue to evolve, and the law of succession struggles to keep up.”¹⁶⁹ The reasons and purposes behind legislative changes to succession laws must “depend on [the] definition of family.”¹⁷⁰ Unfortunately, “[m]ost intestacy statutes do not include . . . children who are adopted out but maintain contacts with their birth families.”¹⁷¹ Texas overlooked adults who are adopted but maintain a relationship with at least one of their biological parents, such as a mother married to the adoptive stepparent.¹⁷²

Section 162.503 of the Family Code sets forth a requirement that the petitioner’s spouse (if the petitioner is married) be included in the petition for adoption.¹⁷³ This requirement, however, is alleviated by section 162.506(b), which reads: “Notwithstanding that both spouses have joined in a petition for the adoption of an adult as required by section 162.503(b), the court may grant the adoption of the adult to both spouses or, on request of the spouses, to only one spouse.”¹⁷⁴ This contradictory language seems minor, but has the potential to be extremely dangerous. Potential intestate or inheritance rights problems may arise if the attorney or pro se petitioner overlooks the mandate that the spouse join, or the exception wherein the adoption can be granted, despite the absence of one spouse.

The unintended impact of the 2005 amendment to section 162.507 of the Family Code no longer can slip under the radar. While the legislature may have had legitimate reasons and good intentions for the change, the amendment was over-inclusive, creating an easily overlooked issue for families who use adult adoption to solidify a traditional parent-child relationship.¹⁷⁵ To resolve the issue and avoid a scenario in which an adult adopted by a stepparent automatically loses all inheritance rights from and through the biological parents, including the parent who is either the spouse or deceased spouse of the adoptive stepparent, an exception should be added to section 162.507(c) specifically preserving the intestate rights of an adopted adult to his or her biological parent’s estate. Recall the current language of section 162.507(c): “The adopted adult may not inherit from or through the adult’s biological parent. A biological parent may not inherit from or through an adopted adult.”¹⁷⁶ Also, recall that the amendment to section 162.507(c) was reinforced in the Probate Code, wherein the

169. Susan N. Gary, *We Are Family: The Definition of Parent and Child for Succession Purposes*, 34 ACTEC L.J. 171, 171 (2008).

170. *Id.* at 172.

171. *Id.*

172. *See supra* text accompanying notes 145–47.

173. TEX. FAM. CODE ANN. § 162.503(b) (West 2011).

174. TEX. FAM. CODE ANN. § 162.506(b) (West 2011).

175. *See supra* Part III.A.

176. TEX. FAM. CODE ANN. § 162.507(a)–(c) (West 2004).

following provision was added: “The natural parent or parents of such child and their kin shall not inherit from or through said child, but, except as provided by [s]ection 162.507(c), Family Code, the child shall inherit from and through its natural parent or parents.”¹⁷⁷

Guided by statutory provisions drafted and enacted by other states, section 162.507 can easily be fixed with the small addition of an exception to section 162.507(c). The revision below reflects this alteration (in italics):

(c) Except in cases of stepparent adoption, wherein the adoptive parent is married to a parent of the adopted child at the time of the adoption or was married to a parent at the time of the death of the parent, the adopted adult may not inherit from or through the adult’s biological parent and a biological parent may not inherit from or through an adopted adult.

This revision to section 162.507(c) is the proper change for several reasons. First, adding the stepparent exception does not change the current structure of section 162.507 as a whole.¹⁷⁸ Rather, the addition of the exception leaves the statute in the same form it had in 2005.¹⁷⁹ Along those same lines, the addition would not demand a change in the Probate Code.¹⁸⁰ As mentioned in Part II.B, the Probate Code was amended in 2005 (along with the Family Code) to read as follows: “The natural parent or parents of such child and their kin shall not inherit from or through said child, but, except as provided by Section 162.507(c), Family Code, the child shall inherit from and through its natural parent or parents.”¹⁸¹ If the exception is added to section 162.507(c), the Probate Code needs no change to reflect the new policy on stepparent adoption.

In addition to demanding no structural overhaul, this revision would resolve the adult adoptee’s inheritance problems without compromising the legislature’s possible purpose of adding the amendment. If we look at the laundry list of possible legislative intentions discussed in Part III.A, none of those listed are defeated by the stepparent exception.¹⁸² The exception does not protect the arguably “manipulative” uses of adult adoption, including adoption of a spouse, same-sex partner, or other adult.¹⁸³ Clearly a spouse, same-sex partner, or other random adult or family friend does not fit within the stepparent exception and would still lose his intestate rights to inherit from his biological parent if he was adopted as an adult in Texas.¹⁸⁴ By

177. TEX. PROB. CODE ANN. § 40 (West 2008).

178. See FAM. § 162.507(a)–(c).

179. *Id.*

180. PROB. § 40.

181. See *supra* Part II.B.

182. See *supra* Part III.A.

183. See *supra* Part III.A.

184. See *supra* Part V.B.

specifically addressing stepparent adoption, the legislature will carve a small, protective niche for the more common adult adoption scenario while maintaining a guard against the other types of “manipulative” uses.¹⁸⁵

Adding the stepparent exception creates only a small amount of protection for a specific group of families. While it does not protect all families attempting to solidify a parent-child relationship, a stepparent exception is not the only means of preserving inheritance available to such families.¹⁸⁶ As Mr. Hofheinz mentioned in his interview and the estate planning community is aware of, adult adoptees and their families can always set up a will to outline precisely what they wish to happen with their estates.¹⁸⁷ Expanding the exception further to include all families establishing a parent-child relationship through adult adoption opens the door to a complicated definition of what a parent-child relationship is and may compromise some of the legislature’s original intentions for adding the amendment.

Lastly and most importantly, this exception would protect families like Chris’s and ensure that nothing is compromised by mistake in the adult adoption process. In stepparent adoption scenarios, one biological parent is still involved—either a mother or a father who is married to the adult adoptee’s stepparent.¹⁸⁸ This is what sparks the need to ensure that the statute permitting the family to solidify the parent-child relationship between the stepparent and the adult child does not destroy the relationship between the biological parent and the adult child. The stepparent exception protects these families against that mistake entirely.¹⁸⁹

VI. CONCLUSION

While one may read this comment or look at section 162.507 and feel that the aforementioned issues can all be resolved without an amendment or without adding an exception to the statute, it is important to remember that “one goal of adult adoption is to ensure inheritance by the ‘child’ from the adoptive parent, even if the adoptive parent’s will is challenged.”¹⁹⁰ Before a family can even begin to imagine protecting inheritance rights from a will

185. See Roe, *supra* note 134. Ms. Roe stated in her interview that when she encounters adult adoption in her practice, it is most commonly a stepparent adoption. See *id.* See also Hofheinz, *supra* note 137. Mr. Hofheinz indicated in his interview that the frequency with which people use the adult adoption statute for unconventional purposes is low. See Roe, *supra* note 134.

186. See generally Roe, *supra* note 134 (adding provision to adoption decree stating “the inheritance tie with the biological parent is not severed”). See also Hofheinz, *supra* note 137.

187. See Hofheinz, *supra* note 137.

188. See SUSAN N. GARY ET. AL., CONTEMPORARY APPROACHES TO TRUSTS AND ESTATES 75 (Wolters Kluwer Law & Business 2011).

189. See *supra* Part V.B.

190. GARY, *supra* note 188, at 76.

challenge, there must be a will. Unfortunately, the majority of Americans do not have a will and instead die intestate.¹⁹¹

Adult adoption may have become a creative means of using the intestate system to create inheritance rights that otherwise could not exist, but we cannot overlook its more traditional use in our attempts to restrict such strategic “manipulation.” In our hypothetical from the introduction, Chris’s family consisted of his biological mother and her husband, Chris’s stepfather.¹⁹² The proposed change in Part V.B will protect families like Chris’s—families in which it does not make sense to strip the adopted adult of his right to inherit through his biological parent. Chris was not seeking to manipulate the intestate laws through his adult adoption; he was seeking to establish a parent-child relationship.¹⁹³ By adding the exception that protects families who choose stepparent adoption of an adult child, families will avoid the potential intestate disaster that the current statute allows.¹⁹⁴

The addition of the stepparent exception proposed in Part V.B would apply to Chris and his family as follows: Through the adult adoption process, Chris would effectively establish a legally recognized parent-child relationship between himself and his stepfather while maintaining the legal relationship between his mother that he never knew he was compromising to begin with. After completing the process, Chris would be able to inherit from both his stepfather and his mother—as it should be.

The Texas Legislature should give some serious thought to this proposed exception to section 162.507(c). Small changes can prevent everyday families using adult adoption as a legal means of creating family bonds from mistakenly cutting too many ties with regards to intestate succession and inheritance rights.

by Chelsi Honeycutt

191. See Lawrence M. Friedman, *Dead Hands: A Social History of Wills, Trusts, and Inheritance Law*, 50 AM. J. LEGAL HIST. 112, 112 (2010).

192. See *supra* Part I.

193. See *supra* Parts I, V.B.

194. See *supra* Part V.B.