Why You Should Avoid Adult Adoptions as Testamentary Tools in Kentucky

on 10.26.2016 | Posted in Litigation

Although most people are familiar with the concept of child adoption, the idea of “adult adoption” is an unfamiliar topic to most individuals. Despite the unfamiliarity of the topic, almost every state has adult adoption laws. These are governed by state law and requirements vary from state to state. For example, some states require that the adopting party is older than the person adopted, some allow adult adoption only if the person to be adopted is of diminished mental capacity, and some require notification of the birth parents.

Kentucky codified its adult adoption law in KRS 405.390, which states: “An adult person over eighteen (18) years of age may be adopted in the same manner as provided by law for the adoption of a child and with the same legal effect, except that his consent alone to such adoption shall be required.” The law was created to allow families to adopt a non-biological adult with whom the family has grown close. Not only can adult adoption strengthen and unite families, but, importantly, it also allows adopted adults to be treated as if they were a biological or adopted child for purposes of estate planning.

While adult adoption appears relatively straightforward, courts have struggled with the concept when used by testators of beneficiaries who use adult adoption solely for inheritance purposes, for instance, by adopting a spouse or parent. Various states have struggled with the laws surrounding such adoptions, with some states allowing an adult to be adopted for inheritance purposes, and others disallowing it based on public policy grounds.

For example, in In re Adoption of Berston, a 29-year-old in Minnesota petitioned to adopt his mother to bring her within the provisions of a trust created by his father. The Supreme Court of Minnesota allowed the adoption, stating that the statute “unequivocally authorizes a petition for the adoption of an adult ‘by any person.’” On the other hand, New York has denied an adult significant other to be adopted for “purposes properly served by marriage, wills and business contracts.”

Like Minnesota, Kentucky appears to allow adult adoptions without looking to the specific reasons behind it. However, individuals should not look to adult adoption as a testamentary tool, as the Kentucky Court of Appeals has expressly disapproved the adoption of an adult “for the purpose of bringing that person under the provisions of a preexisting testamentary instrument when he clearly was not intended to be so covered.” Accordingly, in 2008, the Court of Appeals in Arnold v. Nat’l City Bank determined that it was inappropriate for the husband of a woman who had adopted him as her child to inherit her parents’ trusts, as he had been adopted solely for the purpose of inheriting them. Her parents, who had desired to gift the trusts to the woman’s children, would never have intended to gift the trusts to their daughter’s adopted husband.
Why You Should Avoid Adult Adoptions as Testamentary Tools in Kentucky

Thus, although adult adoption have a more liberal construction in other states, it is important to take note that Kentucky disapproves of adult adoption solely for the purpose of inheritance. Consequently, individuals should be wary about adopting solely for the purpose of inheritance, but should use the statute in line with its intended purpose of strengthening and uniting families with their adult children.

This article originally appeared in the Fall 2016 issue of BGD Magazine. Young-Eun Park is an attorney in the Litigation and Labor and Employment practice groups of Bingham Greenebaum Doll LLP. She focuses her practice on litigation involving business, employment, tort, insurance, and fiduciary and estate disputes.