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INHERITANCE "BY, THROUGH AND FROM" AN ADOPTED PERSON UNDER THE NEW WISCONSIN STATUTE

The nature of the relationship between an adopted person and his adoptive and natural parents and relatives has been the subject of numerous legislative enactments and court decisions in Wisconsin. Several excellent articles have analyzed the effects of many of these developments; however, the enactment of section 851.51 of the Wisconsin Statutes has dated these articles, and it provides the basis for this new commentary.

I. INTRODUCTION

The purpose of this article is to analyze the effects of this newly created statute in light of past developments, current trends and practical problems. Due to the complexity of the issues involved, this article will concentrate primarily on the following subsections of section 851.51 of the Wisconsin Statutes:

(1) INHERITANCE RIGHTS BETWEEN ADOPTED PERSON AND ADOPTIVE RELATIVES. A legally adopted person is treated as a natural child of his adoptive parents for purposes of intestate succession by, through and from the adopted person and for purposes of any statute conferring rights upon children, issue or relatives in connection with the law of intestate succession or wills.

(2) INHERITANCE RIGHTS BETWEEN ADOPTED PERSON AND NATURAL RELATIVES. A legally adopted person ceases to be treated as a child of his natural parents for the same purposes, except:

(a) If a natural parent marries or remarries and the child is adopted by the stepparent, the child is treated as the child of his natural parent for all purposes;

(b) If a natural parent of a legitimate child dies and the other natural parent remarries and the child is adopted by the stepparent, the child is treated as the child of the deceased natural parent for purposes of inheritance through that parent and for purposes


of any statute conferring rights upon children, issue or relatives of that parent under the law of intestate succession or wills.

Despite the desire to provide an article which can be used as a foundation for the practical application of the subsections herein treated, some historical and introductory material is essential to clarify the structure and intent of the current statute.

It may be beneficial to initially outline briefly the six primary problems of intestate succession as they are related to adoption:

1. Intestate succession by the adopted person from his adoptive parents or from adoptive relatives through the adoptive parents by way of representation.
2. Intestate succession through the adopted person from his adoptive parents and their relatives (such as inheritance by children of the adopted person).
3. Intestate succession from the adopted person or through the adopted person (from his children) by the adoptive parents or their relatives.
4. Intestate succession by the adopted person from his natural parents or from natural relatives through the natural parents (such as a natural aunt, uncle, or grandparent).
5. Intestate succession through the adopted person (as by his children) from his natural parents or natural relatives through the natural parents.
6. Intestate succession from the adopted person or through the adopted person (from his children) by the natural parents or their relatives.

The identification of these six problem areas is not intended to be exclusive; however, these categories do provide a practical and convenient foundation for this analysis and should be kept in mind throughout this article.

II. EARLY DEVELOPMENTS

*Hole v. Robbins* was an early case that established the Wisconsin Supreme Court's initial position on the relationship of intestate succession and adoption. In that case, the court applied its interpretation of chapter 49 of the Wisconsin Statutes of 1858, and

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3. 53 Wis. 514, 10 N.W. 617 (1881).
4. The pertinent sections of chapter 49 are:
   Section 6. A child so adopted as aforesaid, shall be deemed, for the purpose of inheritance and succession by such child, custody of the person and right of obedience by such parent or parents by adoption, and all other legal consequences and incidents of the natural relation of parents and children, the same to all intents and purposes
concluded that an adopted child could inherit from his adoptive parents, but the adoptive parents could not inherit from the child. From the opinion in this case, it is apparent that Wisconsin adhered to the common law principle that inheritance followed the blood, and that absent express statutory provision to the contrary the property would remain in the blood line. This interpretation was consistent with the view that rights obtained from adoption were purely statutory and required strict construction.

Subsequent to and consistent with *Hole v. Robbins*, the Wisconsin Supreme Court heard and decided *Lichter v. Thiers.* Thereafter, the dicta in that case was cited as authority for the strict interpretation of the adoption statute and as authority for precluding an adopted child from inheriting from the kindred of his adoptive parents. In 1925, in *Estate of Bradley*, the court faced the issue of the right of an adopted child to inherit from his adoptive kindred. The court held that such inheritance was not permitted, reasoning that there was a distinction to be drawn between making the adopted child an heir of his adoptive parents and an heir of his other adoptive kindred, since the other kindred were not parties to the adoption.

The strict adherence to consanguinity demonstrated by these early cases began to fade subsequent to *Bradley* due to a revision of the adoption statute. The newly revised statute was first construed in *Estate of Hood*. The court concluded that the new revision changed the descent of property of an adopted child from his line of blood to his adoptive parents, their heirs and next of kin. This statutory change and court interpretation was the first indication of a more liberal and practical treatment of the relationship between intestate succession and adoption.

In 1934, the court rendered an opinion on a slightly different
aspect of this statute. In *Estate of Sauer*, the court held that the legislature did not intend to deny to an adopted child the right to inherit from his natural parents. The court again spoke to this issue of dual status for adopted children in 1951, in *Estate of Ries*. In that case it was again indicated that the adopted person did not lose his right to inherit from his natural parents, but the court held that the adopted child had no right of inheritance from any other natural relatives. The court then stated that "[t]he extent to which the adopted child may have a dual status in matters of inheritance is a question of public policy for the legislature, not for the court." 

The rule of the *Ries* case was subsequently changed in 1953, by a legislative amendment to section 322.07(4). The effect of this amendment was to allow the adopted child to inherit from his natural kindred as well as from his natural parents. This perhaps unwise legislation was strongly criticized for good reasons, as will be seen later, by the Child Welfare Committee of the Legislative Council in its 1955 report.

In 1945, the legislature attempted to rectify a rather unusual situation which existed in another area of Wisconsin inheritance and adoption law. Legislation was passed in an attempt to change the rule of the *Bradley* case which had resulted in a situation whereby kindred of adoptive parents could inherit from an adopted child, but the adopted child could not inherit from such kindred. However, the supreme court, in *Estate of Matzke*, held that the 1945 change failed to accomplish its intended purpose. It appears that this series of events in conjunction with the general piecemeal development of Wisconsin's adoption law in this area led to a complete revision of the adoption statute in 1947.

The importance of this revision was its apparent attempt to completely change the status of an adopted person. The statute indicated that, "the effect of the order of adoption is to completely
change the legal status of the adopted person from that of a child of the natural parents to that of a child of the adoptive parents. . . ."\textsuperscript{18} This relatively new approach to the concept and effect of adoption was approved by the supreme court in \textit{Estate of Holcombe}\textsuperscript{19} and again in \textit{Estate of Nelson}.\textsuperscript{20} The legislative creation and the subsequent court ratification of this new legal status conferred upon adopted persons provided a foundation for a subsequent statutory revision in 1955. Unfortunately, the 1969 revision failed to adhere to the spirit of this logical and beneficial approach.

The 1955 legislative revision read as follows:

48.92 Effect of Adoption. (1) After the order of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent shall thereafter exist between the adopted person and the adoptive parents. The adopted person shall be entitled to inherit real and personal property from and through the adoptive parents in accordance with the statutes of descent and distribution, and the adoptive parents shall be entitled to inherit real and personal property from and through the adopted person in accordance with said statutes.

(2) After the order of adoption is entered the relationship of parent and child between the adopted person and his natural parents, unless the natural parent is the spouse of the adoptive parent, shall be completely altered and all the rights, duties and other legal consequences of the relationship shall cease to exist.\textsuperscript{21}

The effects of this statute can be summarized as follows: The adopted person could inherit \textit{from} and \textit{through} the adoptive parents; the adoptive parents could inherit \textit{from} and \textit{through} the adopted person; and the relationship between the adopted person and his natural parents was terminated except as to a natural parent who was also the spouse of the adoptive parent. It was apparent from this statute that the legislature had made an earnest

\textsuperscript{18} Id. The single exception to this change of status was the retention of the right of an adopted person to inherit from his natural parents.

\textsuperscript{19} 259 Wis. 642, 49 N.W.2d 914 (1951).

\textsuperscript{20} 266 Wis. 617, 64 N.W.2d 406 (1954). This modern trend received the following favorable comment in the partial dissent in \textit{Estate of Cheaney}, 266 Wis. 620, 627, 64 N.W.2d 408, 412 (1954):

This tendency of expanding the rights of adopted children is manifest in our recent decisions of \textit{Estate of Holcombe} . . . and \textit{Estate of Nelson} . . . in contrast to the less favorable attitude expressed in \textit{Estate of Bradley} . . . and \textit{Estate of Matzke} . . . .

\textsuperscript{21} Wis. \textsc{Stat.} § 48.92 (1955).
attempt to consolidate the prior piecemeal development of Wisconsin's adoption law as it related to intestate succession. Perhaps the most important aspect of this statute was its effective preservation of the principle that adoption effected a change of status of an adopted person. This factor received substantial comment in three cases which arose subsequent to the adoption of section 48.92.

The supreme court in *Estate of Roth*\(^2\) indicated that the statute, with the one exception noted, terminated the rights of an adopted person as next of kin to his natural parent notwithstanding the fact that prior to 1955 such person was his natural parent's next of kin under Wisconsin Statutes section 322.07 (1953).

In 1966, in *Will of Adler*,\(^2\) the court made the following observation while discussing the current trend of thinking in relation to adoption:

> The tendency, desire and public policy in every adoption is to completely absorb an adopted child into a family unit and to make his status in fact indistinguishable from that of a natural child, not only in his relationship with his adoptive parents, but also with the general public and with relatives who are not immediate members of the family circle.\(^2\)

Subsequent to *Roth* and *Adler*, the court decided *Estate of Topel*.\(^2\) In this case the court indicated that section 48.92 recast the effect of adoption in general terms of *status* rather than in terms of specific rights and further noted that,

> The rationale [of *Estate of Ries* and *Will of Adler*] is that 322.07 completely changed the status of an adopted child by cutting off the rights to inherit from and through natural kin and substituting therefor the same inheritance rights from and through the adoptive parents and kin.\(^2\)

It is interesting to note here that the court in *Topel* denied inheritance by three adopted children who claimed heirship by way of representation (i.e. through their deceased natural father from their natural paternal grandfather who died intestate); but the court indicated that under the Proposed Wisconsin Probate Code, Study Draft section 851.51(2),\(^2\) inheritance would have been al-

\(^{22}\) 25 Wis. 2d 528, 131 N.W.2d 286 (1964).
\(^{23}\) 30 Wis. 2d 250, 140 N.W.2d 219 (1966).
\(^{24}\) Id. at 260, 140 N.W.2d at 224.
\(^{25}\) 32 Wis. 2d 223, 145 N.W.2d 162 (1966).
\(^{26}\) Id. at 226, 145 N.W.2d at 164.
\(^{27}\) Id. at 227, 145 N.W.2d at 164.
followed. This point will be discussed later in further detail.

The foregoing material should indicate the difficulty the legislature and the courts have had in efficiently and effectively defining the rights of an adopted person in relation to intestate succession by, through and from such person. The reorganization of the Wisconsin Probate Code in 1969 led to another attempt to further refine the status of the law in this area. Following will be an analysis of Wis. Laws 1969, ch. 339, sec. 26 (section 851.51 of the Wisconsin Statutes) in light of the basic problem areas set out at the beginning of this article.

III. THE CURRENT LAW

In light of the preceding material, the current statutory language and legislative intent expressed in section 851.51 should be more easily understood. Also, it should be noted that perhaps the most important aspect of the current statute is the far reaching effect of the words "by, through and from" as they are used in subsection (1), and the resulting implications which arise from them in subsection (2).

Consistent with the earlier statutes and with a principle which has been affirmed by Wisconsin case law, subsection (1) of section 851.51 preserves the right of intestate succession by the adopted person from his adoptive parents. The following language would seem to dictate this result:

A legally adopted person is treated as a natural child of his adoptive parents for purposes of intestate succession by . . . the adopted person. . . . (Emphasis added)

Closely related to this right is the right of intestate succession by the adopted person from his other adoptive relatives. This principle was not as readily accepted as the right of intestate succession from the adoptive parents, as was evidenced in Wisconsin by the result in the Bradley case. The nature of the law on this point naturally varies according to the particular statutory language of any given jurisdiction. Generally, however, those statutes which are silent on the right of an adopted person to inherit from adoptive kindred have been construed so as to deny the right. However, where it is the legislative intent to avoid such a construction, various forms of specific statutory provisions have been relied on to

28. See also Eugene M. Haertle, Law of Adoption and Birth Records and Kroncke, A Decade of Probate Law, 1961 Wis. L. Rev. 82.
create this right of inheritance.\textsuperscript{29}

In Wisconsin the following language in subsection (1) of section 851.51 can be relied on for establishing the right of intestate succession by an adopted person from his adoptive relatives:

A legally adopted person is treated as a natural child of his adoptive parents for purposes of intestate succession by . . . the adopted person and for purposes of any statute conferring the rights upon children, issue or relatives in connection with the law of intestate succession. . . . (Emphasis added)\textsuperscript{30}

This conclusion is consistent with the trend of Wisconsin law subsequent to Estate of Bradley and particularly with Wisconsin Statutes section 48.92(1) (1955).\textsuperscript{31} It should also be noted that part of the language relied on above indicates a reference to other statutes conferring rights in connection with the law of intestate succession. The principle statutes probably referred to under these particular circumstances would be section 852.01 dealing with the basic rules for intestate succession and section 852.03(1) concerning the meaning of representation. The correlation of these statutes with section 851.51 will be treated in the last part of this article in more detail.

Subsection (1) of section 851.51 also provides for a right of inheritance by the children of an adopted person from the adoptive parents and relatives. For example, a child of the adopted person may inherit from the adoptive parents or the other adoptive kindred. This provision is consistent with the weight of authority and is supported by reference to the right of representation.\textsuperscript{32} The general reasoning relied on here is that where an adopted person inherits from the adoptive parents and relatives and the adopted person's child succeeds to the inheritance of his parents, such child should naturally inherit per stirpes from his parent's adoptive parents and relatives.\textsuperscript{33}

\textsuperscript{29} Annot., 43 A.L.R.2d 1183 (1955). Part of this annotation indicates that the following examples of statutory language have been construed as including the right to inherit from adoptive relatives through the adoptive parents:

"from and through the adoptive parent"; "inheret from the relatives"; "inheret from the kindred of such parent as well as from the parent"; and jurisdictions with "by, through and from" statutory language.

\textsuperscript{30} The statutes referred to as conferring rights upon children, issue or relatives will be treated later.

\textsuperscript{31} § 48.92(1) indicated in part that, The adopted person shall be entitled to inherit real and personal property from and through the adoptive parents in accordance with the statutes of descent and distribution. . . . (Emphasis added)

\textsuperscript{32} Annot., 94 A.L.R.2d 1200 (1964).

\textsuperscript{33} Id.
The supporting language in section 851.51(1) for this right of intestate succession is:

A legally adopted person is treated as a natural child of his adoptive parents for purposes of intestate succession through the adopted person and for purposes of any statute conferring rights upon children, issue or relatives in connection with the law of intestate succession or wills. (Emphasis added)

This position is also supported by Wisconsin case law subsequent to Estate of Matzke, and it is particularly in harmony with the decision in Estate of Nelson and Wisconsin Statutes section 48.92 (1955).

To this point, the right of an adopted person or his children to inherit from the adoptive parents or relatives has been established. However, the reciprocal right of inheritance also exists. That is, section 851.51(1) permits intestate succession from the adopted person or through the adopted person (as from his children) by the adoptive parents or relatives.

This principle was recognized early by the Wisconsin Supreme Court in Estate of Hood and was apparent in the various legislative changes of the statutory language since 1929. Wisconsin Statutes section 48.92(1) (1955), attempted to make this right of inheritance abundantly clear by the following language:

[T]he adoptive parents shall be entitled to inherit real and personal property from and through the adopted person.

However, an apparent oversight by the legislature resulted in a denial of such inheritance by adoptive relatives, contrary to established legislative and case law precedent. This inconsistent situation arose due to the legislature's use of the words "adoptive parents" rather than "adoptive relatives" or "adoptive kindred" in the above-quoted language. The current statute has rectified this oversight by consolidating the inheritance rights of both the adoptive kindred and the adopted person with the use of "by, through and from" in conjunction with its reference to other statutes "confer-

ning rights upon children, issue or relatives." It should also be noted that such inheritance is consistent with the principle that an adoption completely changes the status of an adopted person by substituting for his rights of inheritance from and through his natu-

34. 250 Wis. 204, 26 N.W.2d 659 (1947).
35. 266 Wis. 617, 64 N.W.2d 406 (1954).
36. 206 Wis. 227, 239 N.W. 448 (1931).
ral parents and kindred the right to inherit from and through his adoptive parents and kindred.

The introductory language of subsection (2) of section 851.51 indicates that "[a] legally adopted person ceases to be treated as a child of his natural parents for the same purposes. . . ." It would appear that it was the legislative intent that this language would sever completely the relationship between the adopted person and his natural parents for the purposes of inheritance. This conclusion is based on the fact that the legislature, as evidenced by the subsequent language, apparently saw the necessity of expressly establishing several exceptions to the broad introductory language. If this was in fact the intent of the legislature, it is then possible to logically and more precisely determine the meaning of the phrase "for the same purposes" found in the introductory language.

This phrase apparently was used to indicate the changed status which resulted from the adoption. The "purposes" referred to would logically seem to be those established in subsection (1); and as the earlier material indicated, the purposes of this subsection were to establish inheritance rights between the adopted person and the adoptive parents and relatives consistent with those found in a natural relationship. Assuming then that these conclusions do represent the intent and actual effect of subsection (1) and the introductory language of subsection (2), this analysis will now turn to the two exceptions which the legislature established in regard to the inheritance rights between the adopted person and his natural parents and relatives.

As was indicated earlier, prior statutory and case law in Wisconsin reflected a reluctance to sever inheritance rights related to the bloodlines of an adopted person. The supreme court indicated that a modification of these inheritance rights would require a clear expression of legislative intent to that effect. This position was consistent with a great number of jurisdictions; and many of them indicated that despite the fact that the dominant feature of a particular statute was to establish an adopted child as an heir of the adoptive parents, absent a reference to the inheritance rights from the natural parents, the statute would not be construed as depriving the child of that inheritance.

In light of these principles and the analysis of the introductory

37. See notes 7, 10, 11 and accompanying text supra.
38. Id.
language in section 851.51(2), it becomes clear that the Wisconsin legislature would have effectively severed the inheritance rights between the adopted person and his natural parents had it enacted only the introductory language. Total dissolution of these rights, however, would not have been practical under many circumstances; therefore, several exceptions to the broad introductory language in section 851.51(2) were created.

Subsection (2)(a) apparently maintains the adopted child's relationship with his natural parent for all purposes of inheritance should that parent be the spouse of the adopting stepparent. This subsection is the broader of the two exceptions created, yet it does demand compliance with specific conditions which do require some clarification.

The first condition indicated is that the natural parent must either marry or remarry. This language was apparently intended to encompass three distinct fact situations: 1) marriage subsequent to the birth of a child born out of wedlock; 2) remarriage after the death of the other natural parent; 3) remarriage subsequent to a divorce. Under each of these situations, should the spouse of the natural parent adopt the child, the child will continue to be treated as the child of the natural parent despite the introductory language found in subsection (2). Note then that the second condition required for the operation of this subsection is the adoption of the child of such natural parent by the stepparent.

Once these conditions are met the effect of section 851.51(2)(a) is to maintain the natural relationship between the adopted child and the natural parent "for all purposes." The broad language used here indicates a probable legislative intent to avoid any possible disruption of the continuing natural ties between the adopted child and his natural parent as well as the natural relatives of the parent.

Subsection (b) of the Section 851.51(2) establishes the second exception to the introductory language. Briefly, this provision indi-

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40. As to this and other related points see Binavince, Adoption and the Law of Descent and Distribution: A Comparative Study and a Proposal For Model Legislation, 51 CORNELL L.Q. 150 (1966).

41. In comparing the current subsection with its predecessor, it is apparent that the new subsection is a substantial improvement over the less explicit wording found in Wis. STAT. § 48.92(2) (1955):

- After the order of adoption is entered the relationship of parent and child between the adopted person and his natural parents, unless the natural parent is the spouse of the adoptive parent, shall be completely altered and all the rights, duties and other legal consequences of the relationship shall cease to exist.
cates that the adopted child is the child of a deceased natural parent for purposes of inheritance through that parent. The construction of this subsection also indicates a narrower application than that of subsection (2)(a).

This portion of the statute would only apply under the following circumstances:

1) after the death of a natural parent of a legitimate child, and
2) the remarriage of the other natural parent, and
3) the stepparent's adoption of the child.

If all of these conditions are met, the statute indicates that the "child is treated as the child of the deceased natural parent for purposes of inheritance through that parent and for purposes of any statute conferring rights upon children, issue or relatives of that parent under the law of intestate succession or wills." (Emphasis added.)

It is readily apparent from this language that this subsection reestablishes the inheritance rights between the adopted child and the kindred of the deceased natural parent. Whether or not this exception is wise remains to be seen. However, there are presently more valid and practical reasons against such a provision than there are supporting it.\(^42\)

Initially, it should be noted that such a provision is contrary to the modern theories of adoption. That is, it is inconsistent with public policy as expressed by the Wisconsin Supreme Court in *Will of Adler*\(^43\) and with the new status theory expressed by the court in *Estate of Topel*\(^44\) and implied by the legislature in Wisconsin Statutes section 48.92 (1955). The courts and the legislature have labored hard and long at creating a logical, practical and efficient method of treating the inheritance rights of an adopted person. This laborious task could have been put to rest if the legislature had not enacted the exception found in section 851.51 (2)(b).

In *Estate of Topel*, the court cited with apparent approval a 1955 Legislative Council report\(^45\) which indicated several reasons in support of severing the ties between the adopted person and his natural kindred under the circumstances contemplated by subsection (2)(b). These reasons may be summarized as follows:

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43. See note 23 and accompanying text supra.
44. See note 25 and accompanying text supra.
1) Inheritance from natural relatives would destroy the protection afforded an adopted child by the secrecy of the adoption records.

2) Settling estates would become more difficult due to the need to trace adopted relatives of a deceased natural relative and natural relatives of a deceased adopted person.

3) If a natural relative is wealthy, he would probably die testate, and the statute would be of little value to the adopted child.

It is apparent that the first two arguments are stronger than the third, and when they are coupled with the contemporary view of adoption and the new status theory, a rather significant argument exists in favor of denying the rights of inheritance provided for in subsection (2)(b). One further argument can be made in favor of denying this right of inheritance through a deceased natural parent. It has been noted in several jurisdictions that inheritance in two capacities from one estate can arise from a statute permitting inheritance from or through both natural and adoptive parents.

This inequitable situation, which could result in double inheritance by an adopted child, is substantially, but not totally, eliminated in Wisconsin by the conditional language of section 851.51(2)(a) and (b).

In the areas where dual inheritance would normally arise, subsections (2)(a) and (b) would generally operate to avoid it due to the requirements of the remarriage of the natural parent and the subsequent adoption by the stepparent. For example, these requirements avoid the creation of inheritance rights between the adopted child and his natural relatives should that child be adopted by his grandparents, and in most other situations. However, it does not deny these rights if the child is adopted by a relative of a deceased parent who marries the surviving parent of the child.

46. See Epstein, Inheritance Rights of an Adopted Child in Texas, 1968 Houston L. Rev. 350, for similar supporting arguments against such rights of inheritance. See also note 40 and accompanying text supra; Inheritance By, Through and From an Adopted Child, 9 Ala. L. Rev. 35 (1956); and The Adopted Child’s Inheritance From Intestate Natural Parents, 55 Ala. L. Rev. 739 (1970).

47. Annot., 37 A.L.R.2d 333 (1954). Following is one example of how such dual inheritance can arise: A, an orphan, is adopted by his grandparent, B; B dies intestate and is survived by A and a natural child C. A is both a surviving child (by adoption) and a child of a deceased child (A’s natural parent); therefore, under an appropriate statute A would take one share as a child of B and one share by representation as a child of his deceased natural parent.

48. The example in note 47 would not apply in Wisconsin.

49. Following is one possible example: C is the child of F and W, F dies and W marries F2, the brother of F. F2 adopts C and has a natural child, C2, by his marriage to W.
is apparent that such a situation will not often arise, there is no cogent reason for leaving the door open to the inequitable situation of dual inheritance which could result, thereby placing an adopted child in a better position than a natural child.\(^5\)

Therefore, for the reasons indicated, it is hoped that the legislature will take affirmative action to remove the single flaw in an otherwise effective and efficient statute. The repeal of section 851.51(2)(b) would accomplish this end and place this statute in harmony with the contemporary and practical views of adoption previously expressed by the Wisconsin Supreme Court and the legislature.

There are two remaining areas to be discussed concerning the interrelationship of inheritance rights, adoption and natural relatives. First to be considered are the rights of intestate succession through the adopted person (as by his child) from his natural parents or from his natural relatives through the natural parents. The two possibilities indicated by this statement fall within the operation of section 851.51(2)(a) and section 851.51(2)(b).

Section 851.51(2)(a) would apparently permit inheritance by the children of an adopted child from or through a natural parent who marries or remarries notwithstanding the adoption by the stepparent of the natural child of this parent. This conclusion is based on the broad language and scope of subsection (2)(a) as indicated earlier.

Section 851.51(2)(b) indicates that a deceased adopted person’s children could inherit through him from his natural relatives notwithstanding the adoption. This result is supported by the following language contained in subsection (2)(b):

\[
\text{[T]he child is treated as the child of the deceased natural parent for purposes of inheritance through that parent and for purposes of any statute conferring rights upon children, issue or relatives of that parent under the law of intestate succession or wills.} \quad (\text{Emphasis added})
\]

Subsequent to the death of F2, GF, the father of F and F2, dies intestate leaving no surviving spouse. Under § 851.51(1) and § 852.01(1)(b), C and C2 would each take a \(\frac{1}{2}\) interest in GF's estate (through F2). However, by the addition of § 851.51(2)(b), C would take \(\frac{1}{2}\) of the estate by representation through the deceased F and \(\frac{3}{4}\) of the estate as an adopted child of F2; therefore, C would take \(\frac{3}{4}\) and C2 \(\frac{1}{4}\) of GF's estate.

50. See Kuhlmann, Intestate Succession By and From the Adopted Child, 28 WASH. U.L.Q. 221 (1943), which indicates generally that the purpose of adoption is to afford the child the status of a natural child and not to give the adopted child an undue advantage resulting from dual inheritance.
It should be noted that the legislature has again permitted a natural relationship to interfere with the new status which was to have been created subsequent to an adoption, and as a result the same criticisms of such a situation which were mentioned earlier could be restated here.

Intestate succession from the adopted person or through the adopted person (from his children) by the natural parents or their relatives represents the last area of discussion related to inheritance rights between adopted persons and their natural relatives.

As would only seem practical and logical, section 851.51(2)(a) would apparently permit inheritance from and through the adopted child by both the natural parent and the natural relatives of that parent. This result is again evident from the broad implications previously discussed arising from the use of the words "for all purposes" at the end of this paragraph.

Section 851.51(2)(b) would also relate to this situation and would indicate support for the proposition that inheritance rights would exist in behalf of the natural relatives through the deceased natural parent from the subsequently adopted natural children of that parent. The language of subsection (2)(b) in conjunction with the previously discussed double use of "through" in section 851.51(1) would seem to necessitate this conclusion in order to maintain a consistent interpretation of the language used within this statute as drafted. The nature of this result is again criticized for failing to sever the relationship between an adopted person and his issue, and the natural relatives of the deceased natural parent.

Before leaving this discussion of the elements and applications of the various subsections of section 851.51, it should be noted that these statutory provisions apply only subsequent to a legal adoption. The necessity of a legal adoption arises from the introductory language in subsections (1) and (2), "a legally adopted person. . . .", and from several Wisconsin Supreme Court cases. Therefore, an adoption that is legally defective or an alleged "equitable adoption" would not support the application of this statute.

IV. STATUTORY CORRELATIONS

The last portion of this article will briefly identify some of the possible effects section 851.51 may have on other statutes related

51. See note 33 and accompanying text supra.
52. St. Vincent's Infant Asylum v. Central Wis. T. Co., 189 Wis. 483, 206 N.W. 921 (1926), Will of Mathews, 198 Wis. 128, 223 N.W. 434 (1929), and Estate of Cheaney, 266 Wis. 620, 64 N.W.2d 408 (1954).
to the law of intestate succession or wills.

The adoption of section 851.51 was accompanied by an amendment of section 48.92 in the Children's Code. The last sentence of subsection (1), relating to inheritance rights after adoption, was deleted, and subsection (3) was created to read:

Rights of inheritance by, from and through an adopted child are governed by s. 851.51.\(^{53}\)

These amendments made the effects of adoption on inheritance and wills a part of the probate statutes, thereby avoiding their needless segregation in the Children’s Code.

Section 851.13 of the Wisconsin Statutes defines “issue” in the following manner and thereby expressly includes within its definition an adopted child:

“Issue” means children, grandchildren, great-grandchildren, and lineal descendants of more remote degrees, including those who occupy that relation by reason by adoption under s. 851.51. . . .

From the language of section 851.51\(^4\) and section 851.13, it becomes apparent that section 852.01 of the Wisconsin Statutes is directly affected by and directly affects the provisions contained in section 851.51. Section 852.01 establishes the basic rules for intestate succession; and, when read in conjunction with section 851.51, the scope of the inheritance rights established or preserved by that section becomes apparent as discussed earlier.

By necessity, application of section 852.01 will often require reference to section 852.03(1) of the Wisconsin Statutes, which establishes the meaning of representation. The provisions of these two statutes as well as the statutory definition of “issue” are essential for a complete understanding of the effects of the language used in section 851.51.

In addition to the above statutes, there are several statutes which are not essential to an understanding of section 851.51, but

\(^{53}\) Wis. Laws 1969, ch. 339, §§ 1 and 2. There is no apparent reason for or effect from the changed order of “by, from and through” as it appears here and “by, through and from” as it appears in § 851.51(1).

\(^{54}\) (1) A legally adopted person is treated as a natural child of his adoptive parents . . . for purposes of any statute conferring rights upon children, issue or relatives in connection with the law of intestate succession . . . (2) . . . treated as a child of his natural parents for the same purposes . . . (a) . . . treated as the child of his natural parent for all purposes; (b) . . . for purposes of any statute conferring rights upon children, issue or relatives of that parent under the law of intestate succession . . .
which are directly affected by its provisions.

Section 853.27, the anti-lapse statute, permits the issue of a deceased relative to take the same interest as the relative would have taken had the relative survived the testator of a will in which he was a beneficiary. Sections 851.51 and 851.13 apparently would combine to permit an adopted child of the deceased relative to represent such relative for the purposes of this statute. Furthermore, there is no reason to restrict the relationship of these sections to the particular situation just noted, since sections 851.51 and 853.13 would remain applicable for the benefit of any adopted person within the provisions and definitions therein indicated.

Section 853.25, concerning the unintentional failure of a testator to provide for his issue, makes specific reference to adopted children and grants them the protections of its provisions. This specific reference to adopted children avoids the necessity of reliance on section 851.51, but it does indicate again the legislative intent to treat the adopted child as a natural child of his adoptive parents.

Section 851.51 would also have an effect on the following provisions of section 853.11(2):

A will is revoked by the subsequent marriage of the testator if the testator is survived by his spouse unless:

(a) The will . . . makes provision for issue of the decedent. . . .

By applying section 851.51 to the following fact situation and in light of the provisions noted above, it would appear that the adoption of the child would have the effect of preventing the revocation of W's will:

H and W adopt C. Subsequent to the adoption, H dies and W drafts a will indicating her “issue” as beneficiaries. W then remarries and dies prior to her second spouse and C.

As already indicated, the provision for “issue” and the existence of the adopted child would apparently prevent the revocation of the will by the subsequent marriage; however, unlike the previous situations discussed in this article, subsection (3) of section 851.51 should be relied on for this result. The necessity for the reliance on this subsection does not arise from the inability of subsections (1) or (2) to protect the rights of the adopted child, but instead it arises from the type of fact situation to which section 853.11(2)(a) applies. It is difficult to imagine a situation wherein section 853.11(2) would apply that did not require the presence of
a class gift. Therefore, the application of subsection (3), specifically referring to the construction of class gifts as including adopted persons, would seem to be required.

This brief discussion of related statutes was not intended to be an analysis of all the possible situations under which section 851.51 may have an effect. It does, however, provide an indication of the broad scope of this statute and the importance of its careful consideration.

V. CONCLUSION

The enactment of this statute has nearly concluded a long history of legislative and judicial commentary on the status of adopted persons for purposes of inheritance and other related matters. This article has attempted to point out the strengths and weaknesses of the current statute in addition to providing a foundation for the practical application of its provisions. It is hoped that the comments and criticisms have been constructive, and that the legislature will eliminate the single weakness still remaining in this area by repealing section 851.51(2)(b), thereby conferring upon the adopted person the new status argued for by the Wisconsin Supreme Court and the other authorities cited.

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