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## I. Adoption of Children

The definition of "abandonment" within the meaning of the Tennessee adoption statutes was clarified in the case of *Ex parte Wolfenden*.[1] The stepmother of the subject child filed a petition for adoption, joined in and consented to by the natural father. A cross-petition was filed by the child's uncle and his wife, seeking to adopt the child and alleging that the natural father had abandoned the child and had delivered her to the home of the uncle for permanent rearing. The circuit judge granted the cross-petition upon the ground that adoption by the uncle was for the best interest of the child. He expressly declined to find whether there had been an abandonment by the natural father, deeming this fact immaterial. The court of appeals reversed and remanded the case for further findings on this point. The appellate court held that in the absence of consent by the natural parent, an adoption cannot be granted without a decree of abandonment.[2] The court held, however, that in this regard the trial judge was not bound by a statutory definition of an "abandoned child" found in the adoption law.[3] This statute provides that any child under eighteen years of age who has been willfully abandoned for four consecutive months or more prior to institution of proceedings to declare an abandonment is deemed to be abandoned. The court of appeals stated that this narrow definition was confined to abandonment proceedings and was not necessarily the test to be applied in adoption cases. Otherwise, a parent could within four months of the adoption proceedings take steps inconsistent with abandonment and render the courts powerless to grant adoptions. The broader test of "a settled purpose to forego all parental duties and relinquish all parental claims" was adopted as a rule to be followed in adoption cases.

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1. 349 S.W.2d 713 (Tenn. App. M.S. 1959).
2. Tenn. Code Ann. §§ 36-108 to -126 (Supp. 1961).
3. Tenn. Code Ann. § 36-102(5) (1956).

Upon the remand of this case the trial court found that there had in fact been an abandonment by the father, but again the court of appeals reversed, holding that the evidence did not sustain this finding.[4] The court pointed out that clear, unequivocal and convincing evidence must be offered to sustain a finding that a natural parent has abandoned his child. The fact that the child might be better situated in a foster home was held not to be a controlling factor in an adoption case. Carefully reviewing the evidence, the court concluded that the natural father had not been guilty of abandonment. It pointed out that this holding did not settle the questions of custody of the child, visitation rights, and the like, in all of which the best interests of the child could be considered, and indicated that the trial court might well leave custody of the child with the foster parents if her welfare could best be served in this way. The court said: "It may well be that many children would be better off in other homes—but that is not, and never has been, a ground for adoption. This is an adoption proceeding; not a custody determination."[5]

In the case of *In re Adoption of Edman*,[6] the court of appeals held that an adoption could not be granted without the consent of the guardian *ad litem* of an incompetent natural parent. The court applied literally the terms of the adoption statutes to the effect that a guardian *ad litem* shall be appointed for an incompetent parent "to give or withhold consent."[7] The court held that the giving of consent was a choice which should not be exercised by the courts, and that if the guardian *ad litem* withheld consent, the adoption simply could not proceed; if the incompetent parent should ever be restored he, of course, would then be in a position to give or withhold consent personally. Again, the fact that the adoption might be for the best interest of the child was held not to be a controlling factor.

## II. Divorce and Alimony

*1. Grounds of Divorce.*—Despite the apparent desirability of terminating the marriage, statutory grounds for divorce were held not proved in the case of *Greene v. Greene*.[8] On a previous appeal of this case,[9] the court of appeals had ordered a remand for further proof as to grounds of divorce. Upon the remand, the evidence revealed that the parties had been married in 1948 but had not lived together since 1951. During most of the time since 1951 the husband had been confined to a hospital in Tennessee and

4. *Ex parte* Wolfenden, 348 S.W.2d 751 (Tenn. App. M.S. 1961).
5. 348 S.W.2d at 757.
6. 348 S.W.2d 345 (Tenn. App. W.S. 1961).
7. Tenn. Code Ann. § 36-108 (Supp. 1961).
8. 349 S.W.2d 186 (Tenn. App. W.S. 1960).
9. Greene v. Greene, 43 Tenn. App. 411, 309 S.W.2d 403 (W.S. 1957), noted in Harbison, *Domestic Relations—1958 Tennessee Survey*, 11 Vand. L. Rev. 1259, 1262 (1958).

had been totally disabled. His wife and child lived in Wisconsin, and he had not contributed to their support, although part of his disability benefits had been sent to them by allottment. Although the husband charged desertion, cruelty and refusal of the wife to reside with him in Tennessee, none of these charges was found to be sustained by the proof. The court of appeals stated that in reality there was no marriage between the parties, no hope of reconciliation, and that the wife had contested the action entirely for economic reasons. However, since Tennessee has no statute authorizing divorce merely upon proof of separation for a specified period, the court found no authority for granting relief. The court suggested the possible desirability of a statute permitting divorce upon proof of a prolonged separation, regardless of fault, as provided in the codes of several other states.[10]

2. *Alimony.*—In the case of *Prichard v. Carter*,[11] the terms of an alimony decree were construed. The husband and wife had owned a joint life estate in a five-acre tract of land on which they resided at the time of their divorce. The divorce decree divested out of the husband and into the wife "the title to the homestead which is now held jointly by the parties, as life tenants." The decree described said "homestead" by boundaries and referred to it as a five-acre tract worth approximately one thousand dollars. Title to all furnishings "in the family residence on said homestead" was also given to the wife.

After the death of his former wife, the husband brought the present suit, claiming title to the property for the remainder of his life. He contended that the only right which had been given to the wife by the divorce decree was the statutory homestead right which is vested in the husband during marriage[12] and which may be transferred to the wife upon divorce.[13] This statutory right is an exemption of one thousand dollars worth of realty from claims of creditors. Contending that only this limited interest had been transferred to the wife, the husband insisted that upon her death his original life estate in the property became operative.

Both the chancellor and the supreme court rejected this contention. The courts held that the term "homestead" as used in the decree referred to the entire tract of land and that it was not used in a technical sense or with reference to the statutory exemption. The statutory exemption can exist only in land owned by the husband in his own name,[14] and in this

10. *E.g.*, KY. REV. STAT. § 403.020(1)(b) (Baldwin Supp. 1961) (living apart without cohabitation for five consecutive years made ground for divorce to either party).

11. 348 S.W.2d 306 (Tenn. 1961).

12. TENN. CODE ANN. § 26-301 (1956).

13. TENN. CODE ANN. § 36-824 (1956).

14. Kellar v. Kellar, 142 Tenn. 524, 221 S.W. 189 (1920); Case Co. v. Joyce, 89 Tenn. 337, 16 S.W. 147 (1890).

case the husband and wife had been given a joint life estate by the original deed. Consequently the husband had no statutory "homestead" right in this property, and the divorce court had evidently intended the term to mean the entire tract upon which the couple and their children resided.

### III. Parent and Child

*1. Dependency in Workmen's Compensation Cases.*—In the case of *Atkins v. Employers Mutual Insurance Co.*,[15] children of the decedent's "common-law" wife were held entitled to share in death benefits under the Tennessee Workmen's Compensation Act, along with a legitimate child of the decedent. The two children and their mother had been living in the home of the deceased for some time before his death, and he had claimed the children as dependents for income tax purposes. He had contributed to their support, so that a finding of actual dependency was justified. Under these circumstances the holding seems correct, inasmuch as actual dependency has long been held to be the test for unrelated children under the compensation law.[16] The meretricious relationship between the mother of the children and the deceased was properly held not to be imputed to the children to their detriment.[17]

15. 347 S.W.2d 49 (Tenn. 1961).

16. Wilmoth v. Phoenix Util. Co., 168 Tenn. 95, 75 S.W.2d 48 (1934); Memphis Fertilizer Co. v. Small, 160 Tenn. 235, 22 S.W.2d 1037 (1930); Kinnard v. Tenn. Chem. Co., 157 Tenn. 206, 7 S.W.2d 807 (1928).

17. Moore Shipbuilding Corp. v. Industrial Acc. Comm'n, 185 Cal. 200, 196 Pac. 257 (1921); Campton v. Industrial Comm'n, 106 Utah 571, 151 P.2d 189 (1944).