

# Court Affirmed Finding That An Applicant Was Not Equitably Adopted Where There Was No Evidence Of An Agreement To Adopt The Applicant

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In *In re Estate of Hines*, the trial court held that an applicant was not equitably adopted by the decedent in an heirship proceeding. No. 06-20-00007-CV, 2020 Tex. App. LEXIS 8000 (Tex. App.—Texarkana July 27, 2020, no pet.). The applicant appealed, and the court of appeals affirmed. The court first addressed the law on equitable adoption:

Adoption by estoppel takes place “when [a person’s] efforts to adopt [a child] are ineffective because of failure to strictly comply with statutory procedures or because, out of neglect or design, agreements to adopt are not performed.” The doctrine of equitable adoption is not “the same as legal adoption” and does not contain “all of the legal consequences of a statutory adoption.” Courts in Texas have “long” recognized the doctrine of equitable adoption. The Texas Estates Code recognizes the doctrine, defining “child” as including a person adopted by “acts of estoppel.” For example, a child has been adopted by estoppel “when a natural parent delivers a child into the custody of others under an agreement between the parent and the custodians that the child will be adopted, and thereafter the custodians and child live in relationship with that of parent and child.” “In no case” has a court in Texas “upheld the adoptive status of a child in the absence of proof of an agreement or contract to adopt.” The agreement may be oral. Adoption by estoppel must be proved by a preponderance of the evidence. Even though Texas recognizes the doctrine of equitable adoption, it has “done so only with caution and within certain well-defined boundaries.” It exists to prevent “a situation where it would be inequitable and grossly unfair to the adopted child, who has performed services and rendered affection, for the adoptive parent or his privies to deny the adoption.” Yet, adoption by estoppel is not a statutory doctrine. Instead, it is a judicially created equitable doctrine... [T]o establish that there was an agreement, Hilton was required to prove that Hines (1) executed “a statutory instrument of adoption in the office of the county clerk”; (2) attempted to complete the statutory adoption but failed “to do so because of some defect in the instrument of adoption, or in its execution or acknowledgment”; or (3) agreed with “[Hilton] to be adopted, or with [Hilton]’s parents, or some other person in loco parentis that he . . . would adopt [Hilton].”

*Id.* (internal citation omitted).

The court held that here was evidence that the applicant considered the decedent to be his father, that the decedent referred to him as his “son,” and that they spent a significant amount of time together. There was evidence to show that decedent and applicant presented themselves to the public as a family. Even so, the court held that there was evidence to support the trial court’s decision as there was no evidence that the decedent had promised to adopt the applicant:

The record established that Danny never entered into a written or oral agreement with Hines allowing Hines to adopt Hilton. Likewise, there was no evidence that Betty Jo agreed to Hines’s adoption of Hilton. That said, there was some evidence that Hines had potentially intended to adopt Hilton sometime in the future. According to Hilton, Hines had discussed with him the possibility of adoption when he was younger, but no agreement was made at the time, and Hines and Hilton chose to put off the issue of adoption until a later date. Likewise, Petty testified that Hines told her that he wanted to adopt Hilton, but because of an issue regarding the possibility of Hilton’s name being changed, the matter was dismissed. And contrary to Petty’s initial testimony, she also said that Hines had told her that he did not “need a piece of paper to tell [him] who [his] kid [was] or tell [him] who [his] son [was],” which is evidence that Hines never intended to adopt Hilton. Regardless, in Hines’s conversations with all of those witnesses, there was no evidence that Hines ever followed-up by actually entering into an agreement to adopt Hilton. Moreover, many of the witnesses testified that they had no knowledge of the existence of an agreement for Hines to adopt Hilton. Because there was some evidence to support the trial court’s finding that no agreement to adopt Hilton existed between Hines and Hilton, or Hines and Hilton’s parents, we find that the evidence was legally sufficient to support the trial court’s finding.

*Id.*

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