1979

Family Law–Adoption–Revised Uniform Adoption Act

Terry L. Derden

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FAMILY LAW—ADOPTION—REVISED UNIFORM ADOPTION ACT. 1977

In 1977 the Arkansas 71st General Assembly passed the Revised Uniform Adoption Act. The bill was signed by Governor David Pryor on March 31, 1977, and went into effect July 5, 1977. While only four other states have passed the RUAA, at least twenty-five states have recently revised their adoption statutes.

The RUAA differs in many aspects from previous Arkansas adoption statutes. There are major alterations in the areas of consent, inheritance, jurisdiction, venue, secrecy, and notice. There are several new sections concerning the termination and relinquishment of parental rights, execution of consent, and disclosure of petitioner's expenditures that relate to the adoption. The following note is a review of the major changes in the Arkansas law on adoptions followed by a brief discussion of related social issues. The statutory topics are arranged whenever possible in the sequential order in which they statutorily appear.

I. STATUTORY CHANGES

A. Who Can Adopt

Under prior Arkansas law a minor could not adopt. The RUAA, however, specifically allows adoption by "a husband and wife together although one or both are minors." The statute also provides for adoption by "the unmarried father or mother of the individual to be adopted." It is not clear whether a minor who wants to adopt

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[Editor's Note: The editors and author of this note would like to thank Judge Thomas F. Butt of Fayetteville, Arkansas, and William Sherman, Representative to the Arkansas House of Representatives and sponsor of the RUAA, for their helpful comments.]


3. These states are Montana, North Dakota, New Mexico and Oklahoma.

4. Research Dep't., Arkansas Legislative Council, Informational Memo No. 226, Adoptions in Arkansas and Other States (1976) [hereinafter cited as Arkansas Adoptions]. This study was prepared by the Research Department of the Arkansas Legislative Council for the Joint Interim Committee on Judiciary. It includes a comparison of the former Arkansas adoption laws to the RUAA, as well as empirical data compiled through questionnaires sent to the Arkansas Child Welfare Services, the surrounding states, and the attorney generals of every state.


his minor child may do so under this provision of the RUAA.

Under the RUAA, there are exceptions to the requirement that the spouse of the adopting individual join in the adoption petition which were not included in the prior law. Under both the new and the old law, the petitioner's spouse need not join in the petition if that spouse is the biological parent of the individual to be adopted. Under the RUAA, a married person who is legally separated from his spouse may adopt without that spouse's consent. This provision was not a part of previous Arkansas law, and it is a good example of the way in which the RUAA makes adoption available to more people. It seems to reflect the changing social values of the family unit. Another provision not formerly part of the Arkansas law allows the court to excuse the spouse from joining in the petition for the following reasons: "prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent." This subsection delegates more discretion to the trial judge than the former statute which did not allow adoption unless the petitioner's spouse consented to it or was the child's natural parent.

B. Venue

The RUAA contains a multiple venue provision which increases the number of forums available to the petitioner. Under the RUAA, a petition may be brought in the court of the place in which "the petitioners or the individual to be adopted resides, or is in military service, or in which the agency having care, custody or control of the minor is located." These new provisions add choices of venue not previously allowed to the petitioners.

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14. Under a prior statute the petition had to be brought in "the county where the person to be adopted resides." The residence of the child was determined to be either the county from which he was removed or surrendered, or the county in which the child was living at the time of the filing of the petition. Ark. Stat. Ann. 56-102 (1971) (repealed 1977). Residency for purposes of Ark. Stat. Ann. § 56-205 (Cum. Supp. 1977) could be construed to mean domicile. See Taylor v. Collins, 172 Ark. 541, 289 S.W. 466 (1927); H. Clark, Law of Domestic Relations § 18.2 at 606 (1968). It appears that the residency requirement is one of jurisdiction.
C. Notice

The notice provisions of the RUAA relate to two different areas—notice of a petition to terminate the parent-child relationship and notice of the petition for adoption. The procedure involves the following steps: (1) determining whose consent to the adoption is required; (2) then excluding certain parties whose consent is not required; and (3) finally determining those parties who have to be given notice but whose consent may not be required.

In accordance with the former Arkansas adoption law, the RUAA does not require that notice be given to the father of an illegitimate child. The absence of required notice presents a constitutional problem. In 1955, a commentator stated that notice need not be given to the parent of an illegitimate child who had furnished neither substantial care nor material provision to the child. The issue of whether notice must be given to a father who had supported his illegitimate children arose in 1972 in *Stanley v. Illinois*.

An Illinois statute provided that the illegitimate children of unwed mothers became wards of the state upon the mother's death. The
putative father had lived with the family and provided support until the mother died, at which time the state took custody of the children. The United States Supreme Court held that the statute violated the unmarried father's fourteenth amendment right to equal protection. In addition, the father was not given the right to a hearing as to his fitness as a parent. The Court in Stanley held that a state may not terminate parental rights until notice is given to a putative father who has established a parental relationship.

The requirement of notice set out in Stanley has been held applicable to adoption proceedings. In a survey completed for the Arkansas legislature, twenty-nine states reported that they had either changed their adoption statutes to comply with the Stanley decision or had re-examined their statutes to ascertain whether they were in conflict with the holding in Stanley. In this report it was pointed out that the Arkansas adoption statute which was in effect at the time was inconsistent with the decision in Stanley. The RUAA does not require that notice be given to the putative father unless he has custody of the minor at the time of the petition, but the putative father in Stanley did not have custody, actual or otherwise, at the time of the dependency proceeding.

Under the RUAA, a putative father will receive notice if he has "otherwise legitimated the minor according to the laws of the place in which the adoption proceeding is brought." The Stanley decision, however, recognized that a parental relationship may be established even though a minor was not legitimated according to the laws of a particular state. It therefore appears that in order to comply with the Stanley decision, one must give notice of the petition for adoption to the putative father even though it may not be required by statute.

Under previous Arkansas statutory law, a minor parent could consent to the adoption of that minor's child. It was held in

23. Id. at 649.
24. Id.
28. Arkansas Adoptions, supra note 4, at 14, 39.
Schrum v. Bolding, however, that a minor mother's consent was invalid because she was not properly served with process prior to the entry of an interlocutory order of adoption. In Schrum the minor's entry of appearance and consent was not considered to be a waiver because a minor cannot waive service of process. Additionally, a guardian had not been appointed to represent the minor parent, and the court held that a judgment rendered against an infant who had no guardian ad litem was reversible error, although not necessarily void. It would appear, therefore, that under the ruling in Schrum, a guardian ad litem must be appointed to represent minor parents. The RUAA makes no provision for this situation, and the Schrum decision should be viewed as an additional requirement in situations in which a minor's consent is necessary.

D. Disclosure and Investigation

The RUAA requires that the petitioner estimate the value of any property which the minor may own. In addition, the RUAA adds a new section which requires a petitioner to file an accounting of all disbursements of anything of value made, or agreed to be made, in connection with the adoption proceeding.

Various approaches have been taken to prevent the outright sale of children and to curb excessive professional fees in connection with adoptions, but the following approaches appear to be the most prevalent: (1) legislation prohibiting most nonstate placements; (2) criminal sanctions against improper placements; and (3) thorough investigation of the adoptive parents. Arkansas has utilized the investigative method of control in two ways. Prior to 1953, Arkansas law required the petitioner to notify the Child Welfare Division that the petition for adoption had been filed. The Child Welfare Division would then review the petition, investigate the petitioners, and

34. 260 Ark. 114, 539 S.W.2d 415 (1976).
35. Id. at 118, 539 S.W.2d at 417. The court construed the Arkansas statutes that provided for the appointment of a guardian to defend a minor. See Ark. Stat. Ann. §§ 27-825, -826 (1962).
file a report with the court. The procedure was later changed to allow the court to decide when the Child Welfare Division should investigate.\footnote{42} 

The RUAA provides that the court may require an investigation and report by the Child Welfare Division.\footnote{43} It states that "the Court may waive the investigation only if it appears that waiver is in the best interest of the minor and that the adoptive home and the minor are suited to each other."\footnote{44} The Act also provides that an investigation is not required in cases where the state agency\footnote{45} is a party, a stepparent is the petitioner, or the individual to be adopted is an adult.\footnote{46} 

E. Who Must Consent  

The RUAA provides who must consent to an adoption, when that consent must be given, how the consent should be executed, and when consent may be withdrawn. As in prior law, the RUAA requires that if the individual to be adopted is a minor over a certain age, he must consent to the adoption,\footnote{47} but the RUAA lowers the age at which the minor must consent from fourteen years to ten years of age.\footnote{48} The study prepared for the Arkansas Legislature revealed that none of the surrounding states required the minor to consent at such a young age.\footnote{49} 

A new requirement included in the RUAA is that the spouse of the individual to be adopted must consent to the adoption.\footnote{50} This 

\footnote{44} Ark. Stat. Ann. § 56-212(c) (Cum. Supp. 1977). Another difficulty occurs in this section. In the last sentence the wording implies that the consent of the agency is required. The sentence should read "[t]he Arkansas Social Services when it is required to consent to the adoption may give consent without making the investigation because Ark. Stat. Ann. § 56-206 (Cum. Supp. 1977) does not specifically require the consent of the agency.  
\footnote{45} Agency is defined in Ark. Stat. Ann. § 56-202(5) (Cum. Supp. 1977), as meaning "any person certified, licensed, or otherwise specially empowered by law or rule to place minors for adoption."  
\footnote{49} Arkansas Adoptions, supra note 4, at 37-38. Mississippi, Missouri, and Tennessee hold the consent of the minor at age 14; Oklahoma and Texas holding the age at 12. At the time the RUAA was under consideration Judge Butt said the following: "By legislative fiat to assume that a 10, 11, or 12 year old is wise enough to make this decision is flying in the face of human experience." Judge Butt further stated that few problems were encountered with the previous age limit and that there were no good reasons for the change. Letter from Judge Thomas F. Butt to Rep. David J. Burleson (Feb. 11, 1975).  
is an important change because an adopted child under the RUAA inherits only from his adoptive parents.\textsuperscript{51} The RUAA also allows the court which has jurisdiction for determining custody of the minor to consent to the adoption "if the legal guardian or custodian of the person of the minor is not empowered to consent to the adoption."\textsuperscript{52} Under the former Arkansas statute\textsuperscript{53} the court did not have the power to consent in this situation.

The RUAA specifies certain individuals whose consent is not required.\textsuperscript{54} As previously noted, the RUAA does not give the putative father the right to notice or consent when he does not have custody of the child or has not legitimated the child.\textsuperscript{55} In \textit{Quilloin v. Walcott}\textsuperscript{56} the United States Supreme Court construed a Georgia statute\textsuperscript{57} that dispensed with the necessity of the consent of the father of an illegitimate child in an adoption proceeding. The father in \textit{Quilloin} had supported his illegitimate child on an irregular basis. The Georgia Supreme Court held that the biological father had no right to withhold consent and distinguished \textit{Stanley} on the basis that the putative father in \textit{Stanley} was a de facto member of the family unit.\textsuperscript{58} The United States Supreme Court affirmed, pointing out that the unwed father in \textit{Quilloin} had not sought or received actual or legal custody of his child, nor had he shouldered any responsibility with respect to the daily supervision, education, protection, or care of the child.\textsuperscript{59} Therefore, the Court held that the state's interest in caring for the child was substantial and that the father's interests were adequately protected by the "best interests of the child" standard.\textsuperscript{60} In light of the \textit{Quilloin} and \textit{Stanley} decisions, it appears necessary to notify the father in any adoption proceeding involving an illegitimate child where the putative father may have provided regular support.

A parent who has relinquished his parental rights under title 56, section 220 of the Arkansas Statutes Annotated\textsuperscript{61} has no right of requisite consent. The consent of a parent may also be dispensed with when the court terminates the parental relationship under this

\begin{itemize}
\item[55.] See section I. C. supra.
\item[56.] 434 U.S. 246 (1978).
\item[59.] Quilloin v. Walcott, 434 U.S. 246, 256 (1978).
\item[60.] Id. at 254.
\end{itemize}
section of the RUAA. The procedures involved in the relinquishment and termination of parental rights will be discussed more fully under that topical heading.62

The court may excuse the necessity of a legal guardian's consent to the adoption if it finds that the guardian is unreasonably withholding consent.63 This provision is consistent with the result in Ratcliffe v. Williams64 wherein the Director of the Arkansas Child Welfare Division, who had been appointed guardian to the child, refused to consent to the adoption. The court, in spite of the Arkansas statute which required the guardian to consent, held that the Director's consent need not be obtained. The court thereby added a provision to existing statutory adoption law that an adoption could be granted upon permission of the probate court.65 Thus, in this respect, the RUAA is a statutory enactment of a prior decision of the Arkansas Supreme Court.

The consent of a parent may also be dispensed with if the parent either abandons or deserts the child or otherwise fails to fulfill parental duties. Abandonment previously had to continue for more than six months.66 Under the RUAA abandonment need not be for six months; furthermore, there is no time limit if a parent deserts the child without affording a means of identification for the child.67 The parent's consent also is not required if the child is in the custody of another person and if for one year the parent has not, without justifiable cause, (1) communicated with the child or (2) supported the child as required by law or judicial decree.68

The RUAA requires that notice be given when there has been an abandonment or when the parent fails to perform parental duties.69 These provisions are consistent with the United States Supreme Court decision in Armstrong v. Manzo70 in which the Court found a due process violation under a Texas law that did not require notice to, and consent of, a legitimate parent who had allegedly deserted his child for more than two years.71

Even though the Arkansas Supreme Court has not yet encoun-

62. See section I. L. infra.
64. 220 Ark. 807, 250 S.W.2d 330 (1952).
65. Id. at 809, 250 S.W.2d at 351; see 7 Ark. L. Rev. 130 (1953).
70. 380 U.S. 545 (1965).
71. Id. at 551.
tered the problem faced in Armstrong, it has defined abandonment to mean conduct which evidences a settled purpose to forego all parental duties for the statutory period. In applying this definition, the court has consistently refused to find abandonment except in the most persuasive cases.

F. How Consent is Executed

The RUAA created new law for Arkansas by providing how one's consent should be executed. The consent of the individual to be adopted must be made in the presence of the court, while the consent of any other person may be made in the presence of the court or before a person authorized to take acknowledgements. When a consent is executed before the court "it will need no further formalities."

The director or representative for the state adoption agency may consent for that agency. In addition to this, the consent need not identify the adopting parents if the person giving his consent states that he consented without requiring the information. This part of the RUAA is directed toward protecting the secrecy of the proceedings. As mentioned before, the Arkansas Supreme Court held in Schrum v. Bolding that a guardian ad litem must be appointed for a minor parent whose consent is required in an adoption proceeding. The guardian may accept service of process and properly defend the minor parent's interest.

72. Zgleszewski v. Zgleszewski, 260 Ark. 629, 542 S.W.2d 765 (1976); Walthall v. Hime, 236 Ark. 689, 368 S.W.2d 77 (1963); Woodson v. Lee, 221 Ark. 517, 254 S.W.2d 326 (1953). The Arkansas Supreme Court has adopted the following definition of abandonment:

To relinquish or give up with the intent of never again resuming or claiming one's rights or interests in; to give up absolutely; to forsake entirely; to renounce utterly; to relinquish all connection with or concern in; to desert, as a person to whom one is bound by a special relation of allegiance or fidelity; to quit; to foresake. Id. at 521, 254 S.W.2d at 329 (quoting Webster's Dictionary).

73. The Arkansas Supreme Court has held the following: (1) that permitting a child to remain for a time undisturbed in the custody of another is not abandonment, Woodson v. Lee, 221 Ark. 517, 254 S.W.2d 326 (1953); (2) that supplying money to support the child and the filing of a writ of habeas corpus before the petition for adoption is filed rebuts any intent to abandon, Walthall v. Hime, 236 Ark. 689, 368 S.W.2d 77 (1963); and (3) that absence due to incarceration is not conclusive on the issue of abandonment, Zgleszewski v. Zgleszewski, 260 Ark. 629, 542 S.W.2d 765 (1976).


G. Withdrawal of Consent

The question of when a consent may be withdrawn has been a heavily litigated issue. Formerly in Arkansas consent could be withdrawn before the entry of an interlocutory order almost as a matter of right.80 After the entry of an interlocutory order, but before a final order, consent could be revoked at the discretion of the court, depending upon all the circumstances.81 After the entry of a final decree, however, consent could not be revoked.82

Under the RUAA, consent may be withdrawn prior to the decree in the discretion of the court, but only after all parties have had an opportunity to be heard. The best interest of the child is the standard which the court must apply.83 After an interlocutory or final decree has been rendered, consent is irrevocable.84 This section of the RUAA is the exception to the general rule that the Act tends to grant greater judicial discretion.

Under the RUAA, a hearing may be held and a decree may be entered twenty days after notice of the filing of the petition is given to the proper persons.85 Formerly in Arkansas all persons whose consents were required were given thirty days after summons in which to answer the petition.86 Failure to answer foreclosed the party from further contesting the procedure.87

H. Orders

There are two basic types of decrees or orders in adoption proceedings. The first type is the interlocutory or temporary order; the second type is a final order. Prior to the passage of the RUAA, a

80. Smith, Adoptions in Arkansas, 14 Ark. L. Rev. 69, 77 (1959). In Combs v. Edmiston, 216 Ark. 270, 225 S.W.2d 26 (1949) an unwed mother was allowed to revoke her consent before the entry of an interlocutory decree because she alleged she was in a critical emotional and physical state when her consent was given.
82. Smith, supra note 80.
87. Id.
court, when granting a petition for adoption, would enter an interlocutory order and place the child in the custody of the petitioner. After six months the petitioner could request a final decree which was ordinarily granted in the absence of valid objections. Where an adult was being adopted, the court could only enter a final order.

The RUAA gives the court more options by providing that a final decree shall not be issued and an interlocutory decree may not become final until the minor to be adopted has lived in the adoptive home for at least six months after the agency placement or for at least six months after the petition is filed. When the court grants an initial petition, it may, subject to the previously stated provisions, grant either a final order or an interlocutory order. An interlocutory order will automatically become final after the lapse of a period of time set out in the order. That period may not be less than six months nor more than one year. The court may set aside an interlocutory order before it becomes final if good cause is shown.

I. Appeal

Only a final order or an interlocutory order that has become final may be appealed to the Arkansas Supreme Court. The RUAA changes the statute of limitations for appeal to one year instead of two years. The adoption proceeding may be attacked on any valid grounds before the statute of limitations runs. Formerly, Arkansas law contained an annulment statute which provided that in certain situations an adoption order could be abrogated. There is no an-

93. Id.
94. Id.
Subject to the disposition of an appeal, upon the expiration of one [1] year after an adoption decree is issued the decree cannot be questioned by any person including the petitioner, in any manner upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter, unless, in the case of the adoption of a minor the petitioner has not taken custody of the minor, or, in the case of the adoption of an adult, the adult had no knowledge of the decree within the one [1] year period.
nulment provision in the RUAA. Therefore, a final order may only be attacked within the one year period of limitation. The statute of limitations is tolled (1) when an appeal has been brought; (2) when the adoptive parents have not taken custody of the minor to be adopted; or (3) when the adopted adult has had no knowledge of the adoption within the one year period. 99

J. Secrecy

Prior to 1955, the records of adoption proceedings, although confidential, could be inspected by the interested parties and their attorneys, representatives of the state Child Welfare Division, or anyone else obtaining permission of the court. 100 Later, this section was changed to allow inspection only by persons who were found to have good cause. 101 Under the RUAA, the proceedings are held in closed court and “are subject to inspection only upon consent of the court and all interested persons.” 102 The Act also provides for judicial discretion in “exceptional cases.” 103 Thus the RUAA, proceeding in the direction of previous Arkansas law, strengthens the secrecy of the proceedings.

The Act additionally provides that no person is required to disclose the identity of an adoptive parent or an adopted child unless disclosure is authorized by the adoptive parent, by the adopted child if over 14 years of age, or by the court in exceptional cases when good cause is shown. 104 The express intent of this provision 105 is to meet the problem presented in Anonymous v. Anonymous 106 wherein the attorney for the adoptive parents had refused to disclose the names of the adoptive parents or the new name of the adopted child. This information was sought by the biological mother so that she might bring an action to withdraw her consent. In finding for the biological mother, the court held that the attorney-client privilege was inapplicable and directed the attorney to disclose the desired information. Under the RUAA, the individual seeking such information would be required to show good cause before the court would grant access to the information. 107

K. Inheritance

Perhaps the most drastic change that the RUAA makes to existing law is in the area of inheritance. It provides that the adopted child can no longer inherit from his biological parents.\(^{108}\) It has been stated that this is the modern trend to ease the transition from the old family to the new family by making a complete break from former family ties, while at the same time preserving the secrecy of the adoption.\(^{109}\) This change raises a question concerning the effect of the RUAA on the status of the adoptive child who is not specifically excluded from a will. It has been stated that, "[I]n the absence of [an] express provision [excluding adopted children from a will], it may well be that the broad terms of the [Uniform Adoption] Act would incline to the inclusion of the adoptee."\(^{110}\)

The RUAA fulfills prior legislative intent in multiple adoption

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108. ARK. STAT. ANN. § 56-215(a)(1) (Cum. Supp. 1977) states that "'[a] final decree of adoption and an interlocutory decree of adoption which has become final . . . have the following effect . . . : (1) . . . to terminate all legal relationships between the adopted individual and his relatives, including his natural parents . . . ." This section replaces ARK. STAT. ANN. § 61-147 (1971) (repealed 1977) which stated that "'[a]n adopted child may inherit from his natural parents and from their lineal and collateral kindred.'"


110. Merrill, Toward Uniformity in Adoption Law, 40 IOWA L. REV. 299, 321 (1955). Arkansas was formerly in accord with this position. See ARK. STAT. ANN. § 61-147(f) (1971) (repealed 1977). The former statute provided that "'[a]n adopted child, if not mentioned by name or by reference to a class in The Will of an adoptive parent, will inherit from that parent as a pretermitted child.'" The Commissioners of the Uniform Adoption Act stated that by using the word "child" this section is intended to include the adopted child whenever the word "child" or similar word such as "issue" is used in an instrument unless an adopted individual is expressly excluded. UNIFORM ADOPTION ACT, (U.L.A.) § 14, Commissioner's note, at 32.

The courts, however, do not agree on the exact definition of the terms that classify beneficiaries of wills. In Moore v. McAlester, 428 P.2d 266 (Okla. 1967) an Oklahoma court construed its version of the Uniform Adoption Act holding that an adopted child is not included in the phrase "issue of her body." The court stated that the phrase had a well defined meaning and was "customarily used (as distinguished from the word 'issue') for one purpose and one purpose only—to exclude adopted children from the class described." Id. at 270.

The Arkansas Supreme Court has held that the phrases "heirs of the body," Davis v. Davis, 219 Ark. 623, 243 S.W.2d 739 (1951); "bodily heirs," Nuckolls v. Mantooth, 234 Ark. 64, 350 S.W.2d 512 (1961); and "issue," Bilsky v. Bilsky, 248 Ark. 1060, 455 S.W.2d 901 (1970) did not include adopted children. In 1961 it was reported that the outer limits of statutory interpretation in Arkansas included adopted individuals in the term "children" but not in the terms "heirs" or "bodily heirs." 15 ARK. L. REV. 194, 199 (1961). But see Major v. Kammer, 258 S.W.2d 506 (Ky. App. 1953). In Davis there was a vigorous dissent by Judge Holt. The dissent pointed out that the language of the statute could not be plainer, and that the words "as if born to them in legal wedlock" placed the adopted child in "exactly" the same position as natural children. Davis v. Davis, 219 Ark. 623, 626, 243 S.W.2d 739, 741-42 (1951) (Holt, J., dissenting).
situations. In *Hawkins v. Hawkins* it was held that in situations of multiple adoptions of one person, the adopted person could inherit from both adoptive parents. Subsequently, the Arkansas legislature enacted a statute which specifically overruled this decision. Under the RUAA, the natural parents' relationship with their child is totally severed when an adoption proceeding is completed. Thus, if an individual who had been adopted one time were to be adopted a second time, the first adoptive parent would be in the place of the natural parent in a normal proceeding. The relationship of the first adoptive parent would therefore be severed from the adopted child and that child could not inherit from him.

L. *Termination and Relinquishment of Parental Rights*

The final section of the RUAA provides for the termination and relinquishment of the parent-child relationship. The execution of a written relinquishment has the effect of severing all parental rights, including the right to control the child, the right to withhold consent to an adoption, and the right to receive notice of a hearing on a petition for adoption. A written relinquishment signed by the parent may occur in two ways. The first is when an agency is to take custody of the child. In this situation a relinquishment may be made by the parent in the presence of a representative of the agency or a judge of a court of record. In all other situations the following three prerequisites must be satisfied: (1) the person petitioning for adoption and seeking the relinquishment of the natural parent must have had custody of the child to be adopted for two years; (2) the relinquishment will not be considered unless the biological parent has received notice of the petition for adoption; and (3) the court must find the adoption action to be in the best interest of the child.

The relinquishment may be revoked as a matter of right within ten days after it is granted or the child is born, whichever is later. This provision applies only when an agency is to take custody of the

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111. 218 Ark. 423, 236 S.W.2d 733 (1951).
117. Id. at (b)(2).
child. A relinquishment may also be withdrawn upon the motion of the parent if the child has not been placed for adoption and the person having custody of the child consents to the withdrawal.

The court may also terminate the parent-child relationship. The RUAA allows the petition of termination to be brought in conjunction with an adoption proceeding. The grounds upon which the court may issue a decree of termination are set out. Briefly, these grounds are abandonment, misconduct, continuous neglect, or unreasonable withholding of consent by a parent not having custody of the child.

The effect of a decree terminating the parent-child relation has the expressed consequence of dispensing with the necessity of notice and consent in a later adoption proceeding. Before the termination petition may be heard, however, notice of the petition must be given to the biological parents. As discussed previously in Section I. E., the Arkansas Supreme Court has held that any action against a minor without the appointment of a guardian ad litem is voidable on direct attack. In addition, the decree may be subsequently overturned by the court on the motion of the biological parent if the child has not been placed for adoption and the person having custody over the child consents to vacation of the decree.

The termination provision can be a valuable aid in protecting the identity of the adoptive parents. The petition for termination may be brought prior to an adoption proceeding; it dispenses with the necessity of the notice to and the consent of the biological parents to the adoption itself. Furthermore, the termination proceeding may be brought in conjunction with the adoption proceeding, but the natural parent must be given notice of the hearing and an opportunity to be heard.

II. RELATED SOCIAL ISSUES

A. Religion

One aspect of the prior law which was not expressly re-enacted

118. Id. at (b)(1).
121. Id.
122. See section I. E. supra.
125. 260 Ark. 114, 539 S.W.2d 415 (1976).
in the RUAA was the requirement that the petitioner be adjudged "morally fit." In some jurisdictions, a specific finding of moral fitness may be encompassed by the phrase "in the best interest of the child." While few people would contend that the absence of this provision allows a morally unfit person to adopt, it does raise the question of what role, if any, the religion of the parents should play in the adoption process. Some jurisdictions make it a requirement "when practical" to place a child with people of the same or a similar religious belief. Other jurisdictions construe the religion of the parties as only one factor among several to be considered. Arkansas leaves it to the discretion of the trial court. In a pamphlet published and distributed by the Arkansas Social Services, it was stated that "no particular church attendance is required or preferred." It therefore appears that the Arkansas provision will withstand any first amendment attacks that other states have encountered.

B. Combating the Gray Market

The RUAA requires the petitioner to file a full accounting report of all disbursements of anything valuable made, or agreed to be made, in connection with any adoption proceeding. This section is based on a California law and is designed to control abuses that occur in private placements. It has been reported that "[i]nstances of large medical or legal fees collected in adoption proceedings have led to a demand that all fees and expenses connected with an adoption should be reported to the court." The reason for the abuse is clear—there are more parents who wish to adopt than there are available children. The basic economic principle of supply and demand dictates that the baby market is,

131. In re Adoption of a Minor, 228 F.2d 446 (D.C. Cir. 1955).
133. Ark. Social Services, Happiness in a Home with Children—Parenthood through Adoption, reprinted in part in Arkansas Adoptions, supra note 4, at 31.
and will continue to be, a seller's market. There are two distinct types of markets, referred to as a gray market and a black market. The black market has been defined as independent adoptive placement in which a third party makes a profit. The gray market is similar but the profit motive is replaced by the good intentions of doctors, lawyers, friends, and parents.

It would be naive to contend that such activities are not occurring in Arkansas. In 1958 an attorney for the State Department of Public Welfare stated that "at least four examples of the outright sale of babies" had occurred in Arkansas. He went on to comment that the control against "the selling of flesh" in Arkansas was the high integrity of Arkansas judges and attorneys. Unfortunately, the Act fails to solve the problem. As noted by the original drafters, failure to comply with this section neither invalidates the adoption nor prohibits the petitioner from obtaining the child.

Many commentators agree that the ills attendant in private or "gray" placements can be cured, or at least controlled, by requiring a report and investigation by the state adoption agency. A state agency does not usually place a child in a home unless it has done the following: (1) made an investigation of the medical and psychological histories of the natural parents, with an attentive eye toward symptoms that might indicate epilepsy, feeblemindedness, or psychosis; (2) conducted a thorough study of the child; and (3) compiled a total evaluation of the adoptive parents. Furthermore, the persons conducting the investigation are trained in these matters and can more readily recognize latent problems which are not apparent at the time of adoption. The investigation and report by the agency covers the adoptive home and the individual to be adopted. The court should use this information to create a family unit that will encounter only normal problems and to avoid those
problems that might place too great a strain on the new relationship of parent and child.

III. CONCLUSION

The RUAA is of major importance. It has changed the law of Arkansas in a number of ways. It has made adoption available to more people by allowing minors and persons legally separated from their spouses to adopt. Formerly in Arkansas, these people could not adopt.

The provisions of the RUAA that relate to notice and consent are complex. Some situations, however, such as those in Stanley and Schrum, are not covered by the Act; therefore, attorneys are advised to give notice to the natural father of an illegitimate child if there has been a parental relationship established. Likewise, when the parents of an adoptive child are both minors, the appointment of a guardian ad litem would protect the validity of their consents.

The Act balances the various interests involved in adoption proceedings. The RUAA appropriately tips the scales to ensure that the best interests of the child are always considered. It also grants more power to the court. Since each adoption proceeding will have its own unique circumstances, it is best that the court have the latitude to address each case appropriately.

[Note by Terry L. Derden]