

J. Y. Interpretation No.28 (December 16, 1953) *

ISSUE: Is a biological parent entitled to bring a suit on his or her own initiative for the interests of a child who is already adopted by another?

RELEVANT LAWS:

Article 17 of the Regulation Governing the Adjudication of the Grand Justices Council (大法官會議規則第十七條); Articles 967, 1077 and 1083 of the Civil Code (民法第九百六十七條、第一千零七十七條及第一千零八十八條); Article 582 of the Code of Civil Procedure (民事訴訟法第五百八十二條); Article 214 of the Code of Criminal Procedure (刑事訴訟法第二百十四條) .

KEYWORDS:

Extraordinary appeal (非常上訴), non-appellable judgment (終審判決), original sentence (原審判決), adopted children (養子女), adoptive parents (養父母), biological parents (生父母), biological siblings (親兄弟), immediate family member (直系血親), non-immediate family member (非直系血親).**

* Translated by Lawrence L. C. Lee.

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HOLDING: The ultimate judgment of extraordinary appeal that was made by the Supreme Court concerning this case of litigation between adopted children and adoptive parents may restrain future judgments. However, the grounds of the case stated or claimed in the original sentence were presented to competent official agencies for opinions pursuant to Article 17 of the Regulation Governing the Adjudication of the Grand Justices Council. The Supreme Court replied that the forgoing sentence is based on Yuan No.2747 (Judicial Yuan) and Interpretation No. 3004 (Judicial Yuan). Furthermore, the Public Prosecutor's Office for the Supreme Court replied that if the reasoning made in the forgoing sentence is the result of the explanations of the Judicial Yuan set prior to the enforcement of the Constitution (effective on October 25, 1946), it is necessary for the Judicial Yuan to provide an appropriate explanation in order to ensure that there will not be any ambiguities in legal terminologies afterwards.

Due to questions about the forgoing

解釋文：最高法院對於非常上訴所為之判決，係屬終審判決，自有拘束該訴司法院大法官解釋彙編訟之效力。惟關於本件原附判決所持引用法條之理由，經依大法官會議規則第十七條向有關機關徵詢意見，據最高法院覆稱，該項判決係以司法院院字第二七四七號及院解字第三零零四號解釋為立論之根據。復據最高法院檢察署函復，如該項判決所持見解，係由大院行憲前之解釋例演繹而來，亦請重為適當之解釋，以便今後統一適用各等語。

是本件係對於行憲前本院所為上

explanations (Yuan No.2747 (Judicial Yuan)) and Interpretation No. 3004 (Judicial Yuan) set forth before the enforcement of the Constitution Law, we agreed that an explanation would be provided for this case according to a non-agenda proposal presented at the Ninth Council of the Grand Justices on August 16, 1952.

Under Article 967 of the Civil Code, adopted children and their biological parents and adopted children and their biological siblings are considered immediate and non-immediate family members, respectively. Although Article 1077 of the Civil Code states that the relationship between adoptive parents and their adopted children is recognized as akin to that of a legal family member and his/her biological children, there is an additional legal requirement that the biological blood relations between adopted children and their biological parents remain intact.

The relationship between biological parent and child will be recovered upon the cessation of the relationship between

述解釋發生疑義，依四十一年八月十六日，本會議第九次會議臨時動議第一案之決議，認為應予解答。

養子女與本生父母及其兄弟姊妹原屬民法第九百六十七條所定之直系血親與旁系血親。其與養父母之關係，縱因民法第一千零七十七條所定，除法律另有規定外，與婚生子女同，而成為擬制血親，惟其與本生父母方面之天然血親仍屬存在。

同法第一千零八十三條所稱養子女自收養關係終止時起，回復其與本生父母之關係。所謂回復者，係指回復其

adopted children and adoptive parents under Article 1083 of the Civil Code. Since the natural blood relations between adoptive children and their biological parents can never be changed, the change from adoptive child status to biological child status results in the recovery of legal duties and responsibilities between adopted children and biological parents.

When there is a conflict of interest in litigation between adopted children and adoptive parents, the biological parents of the adopted children can initiate litigation on behalf of the adoptive children under Article 582 of the Code of Civil Procedure. As a result, the agent role of biological parents in litigation suggests that biological parents are likely to protect their adopted children's legal interest in terms of relative regulations during the period of adoption.

In this case, Article 214 of Criminal Code provides that the victim's immediate family can independently bring a suit against the tortfeasor, who has no reason to exclude the biological parents.

相互間之權利義務，其固有之天然血親自無待於回復。

當養父母與養子女利害相反涉及訴訟時，依民事訴訟法第五百八十二條規定，其本生父母得代為訴訟行為，可見雖在收養期間，本生父母對於養子女之利益，仍得依法加以保護。

就本件而論，刑事訴訟法第二百一十四條後段所稱被害人之血親得獨立告訴，尤無排斥其天然血親之理由。

Yuan No.2747 (Judicial Yuan) and Interpretation No. 3004 (Judicial Yuan) should be supplemented with an extensive explanation because their respective explanations only focused on the basis of the relationship between adopted children and their adoptive parents rather than the legal relationship between adopted children and their biological parents.

本院院字第二七四七號及院解字第三零零四號解釋，僅就養父母方面之親屬關係立論，初未涉及其與本生父母方面之法律關係，應予補充解釋。