**Title:** How About Adopting an Adult?

**Subtitle:**

**Meta Description:** How About Adopting an Adult?

**Date:** 1-5-2012

**Author:** James F. McDonough

**Formatted Content:**

**Raw Content:** Seldom do news stories raise the attention of many lawyers; however, yesterday there was an exception.  A wealthy individual killed a young man while allegedly <a href="http://en.wikipedia.org/wiki/Driving\_under\_the\_influence">driving under the influence</a> and is now awaiting trial in <a href="http://www.dos.state.fl.us/">Florida</a> (the “Driver”).  [My condolences to the victim’s family.]
In 1991, the Driver established a trust in <a href="http://www.texas.gov/en/Pages/default.aspx">Texas</a> for the benefit of his two children by his first marriage with a gift of $1.5m.  {There is a question of whether the funds were those of the grandfather or the Driver.] The 1991 trust has grown substantially and is reportedly worth over $100 million today as the family business was sold before the accident for $1.4billion.  The proper application of <a href="http://en.wikipedia.org/wiki/Generation-skipping\_transfer\_tax">Generation Skipping Tax Exclusion</a> in 1991 could allow the trust to continue indefinitely. This is an estate planning attorney's version of winning the lottery or the <a href="http://www.nfl.com/superbowl/46">Super Bowl</a>.
The Driver, age 49, adopted, in Florida, his girlfriend, age 42, whereupon she became the third eligible beneficiary of the trust because the language, written in 1991, included children born to or adopted by the Driver after the execution of the trust instrument.  The language is not unusual or nefarious.   The victim’s attorneys state that the adoption gives the girlfriend-daughter 70% of one-third of the income of the trust, $1,000,000 immediately, $3,000,000 in 2012 and about $4,750,000 each year thereafter.  The 70% of her one-third share is reflected in an “<a href="http://family.findlaw.com/adoption/glossary-of-adoption-terms.html">Adoption Agreement</a>” with the 30% being distributed to the other beneficiaries, the two children, and other restrictions.
The victim’s counsel claims that the adoption and Adoption Agreement give Driver the ability to use his assets as his own and extrapolate that, with each adoption, subsequently draining the 1991 trust.  I suppose Driver would find enough volunteers willing to be adopted.
Why the attack?  Clearly the 1991 trust predated the accident and cannot be attacked on grounds of being a fraudulent transfer.  The answer is found in the pleadings in that Plaintiff’s counsel wants the side agreement and the adoption to be introduced as evidence of Driver’s financial resources “…..so the jury can assess a punitive damage verdict in an amount that will punish (the Driver).  They go on to say it is not clear whether an attempt to collect any judgment would have to be made against the 1991 Trust.  I cannot say whether Driver has undertaken<a href="http://en.wikipedia.org/wiki/Asset\_protection"> asset protection</a> making collection impossible or not. There is no indication that Driver attempted to make a fraudulent conveyance from other assets in his name.
What does this case stand for? I will leave the rules of evidence to others, but clearly admission of foregoing, for purposes of determining the financial resources of the Driver for assessing damages, impacts the asset protection aspect of the 1991 Trust. If matters surrounding the adoption and 1991 Trust are placed before a jury that is assessing damages and they react by raising the damage award, is there overall asset protection? You can be certain that the attorneys for the other two beneficiaries are watching.