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## **Get Adopted and Get Twice the Inheritance**

Can a nephew also be the legal brother of his deceased aunt and, as a result, inherit twice as much as other siblings of the aunt at her death? A recent case in Mississippi says “Yes” – if the nephew’s grandparents adopt him. To see how unexpected and unintended results can arise when there is no thoughtful estate planning and carefully drafted will or living trust, read this interesting summary.

Janice Jenkins died without a will in Pike County, and without a spouse, surviving children, or other descendants. At the time of her death, Janice was a ward under a pending conservatorship proceeding in chancery court. At her death, a decree was entered converting the conservatorship to a probate of Janice’s estate and appointing Willena Jenkins, Janice’s mother, as the administrator. Willena filed a petition for adjudication of heirship to determine Janice’s heirs at law who would inherit her estate. Inheritance statutes in Mississippi provide that Janice’s parents and siblings (eight in all) would inherit her estate in equal shares. One of Janice’s sisters, Stephanie Ann Jenkins, had predeceased (died before) Janice. Stephanie left one living descendant, her minor son and natural child, DeMarcus. However, after his mother’s death, DeMarcus had been lawfully adopted by his grandparents, Willena and Edward, making him the adopted brother of his Aunt Janice (adding a ninth heir of Janice’s estate). The adoption decree did not preclude or limit the right of DeMarcus to inherit from the estate of his mother, Stephanie. Willena filed a petition to allow certain claims and requesting the chancery court determine the apportionment of the estate as it pertains to DeMarcus because of the unusual situation that had arisen. Under the applicable law regarding inheritance, DeMarcus would be entitled to inherit the share of his deceased mother, Stephanie. As a result of his adoption by Willena and Edward, DeMarcus would also be entitled to inherit a share as Janice’s adopted brother. The chancellor found that Janice’s heirs at law would each receive a one-ninth share of her estate, with the exception of DeMarcus, who would receive two one-ninth shares. Willena (DeMarcus’ grandmother and adopted mother) appealed.

**The Court’s Analysis:** Section 91-1-3 of the Mississippi Code preserves the right of DeMarcus to inherit his deceased mother’s portion of Janice’s estate, as his mother’s sole descendant. Section 93-17-13 provides that DeMarcus, as the adopted son of Janice’s mother and father (his natural grandparents), would also be treated as Janice’s adopted brother for inheritance purposes. Case law in Mississippi is also clear that, in the absence of a statute or decree to the contrary, an adoptive child inherits from both natural and adoptive parents. Willena argues that the legislative intent of section 93-17-13 is to elevate the adopted child to the same level as the natural child, but not to raise the

adoptive child higher than the natural child. Strict statutory construction – giving full effect to both statutes – is necessary in this situation, even though it results in DeMarcus’s receiving a greater share than the other heirs of Janice. The court stated that it is clear that DeMarcus has the right to inherit pursuant to both section 91-1-3 and section 93-17-13. Thus, DeMarcus may inherit as both an adopted sibling of Janice and as the son of Janice’s natural sister, Stephanie.

**JENKINS v. JENKINS, NO. 2007-CA-01166-COA**