When Is a Son Named in a Will Not Entitled to Inherit?: *Maniscalco v. Womack* on Adoption by Estoppel and Attorney's Fees

David W. Reynolds

November 6, 2026

Texas recognizes adoption by estoppel, allowing a child to claim inheritance rights without formal adoption, but the doctrine requires more than a parent-child bond. A person can grow up calling someone Dad, appear in that person's will as a son, and maintain a parent-child relationship for decades without establishing adoption by estoppel. That legal result does not mean the familial bond lacked the significance of a parent-child relationship. Nor does it necessarily prevent the claimant from recovering attorney's fees for pursuing the claim in good faith.

In *Maniscalco v. Womack*, No. 01-23-00419-CV, 2026 WL 3210414 (Tex. App.—Houston [1st Dist.] Oct. 27, 2026), Jack Madison Maniscalco, Jr. claimed that his former stepfather, Huland Eugene "Gene" Womack, adopted him by estoppel. Gene married Jack's mother, Norma, in 1970, when Jack was almost nine. Gene's 1980 will identified Jack as "my child" and "my son," and provided that Jack would inherit if Norma predeceased Gene. The will also called Jack's brother, Tommy, Gene's "other son." *Id.* at *1–2.

Gene and Norma divorced in 1992, and Gene died in 2020. Unfortunately for Jack, under Texas Estates Code Section 123.001(b)(1), a will executed before divorce generally treats the former spouse and that spouse's relatives as having predeceasesd the testator. Jack therefore needed to establish that Gene had adopted him by estoppel to preserve his inheritance rights, even though Gene named Jack in his will. *Id.* at *12.

Adoption by estoppel protects a child's inheritance rights when someone agrees to adopt the child but fails to complete the statutory process. It does not confer every consequence of a legal adoption. To establish applicability of this equitable doctrine, a claimant must prove two elements by a preponderance of the evidence: (1) an oral or written agreement to adopt while the child was a minor, and (2) the child's performance through love, affection, and services ordinarily associated with a parent-child relationship. A familial bond addresses only the second element, no matter how significant. *Id.* at *11–12 (citing *Dampier v. Williams*, 493 S.W.3d 118, 121–22 (Tex. App.—Houston [1st Dist.] 2016, no pet.)).

A familial bond alone cannot satisfy the need for an agreement to adopt.

Jack testified that Gene raised him as a son, taking him hunting and fishing, attending sporting events, and remaining involved in family gatherings. Norma testified that Gene agreed to adopt her sons. Gene's résumé listed two children, and photographs documented their relationship. But Gene never pursued a formal adoption. Norma continued seeking child support from Jack's biological father after the alleged agreement, and the divorce pleadings stated that no children had been born to or adopted during the marriage. Gene's relatives also disputed the claimed adoption. *Id.* at *2–5, *13–15.

After a four-day trial, the jury found that Gene had not adopted Jack by estoppel. Jack appealed, and Houston's First Court of Appeals upheld the jury's finding under a factual sufficiency review. *Id.* at *5–6, *12–15. In upholding the jury's verdict, the First Court examined

prior appellate decisions illustrating the distinction between a familial bond and an agreement to adopt.

The First Court first analyzed *In re Hines*, No. 06-20-00007-CV, 2020 WL 5948803 (Tex. App.—Texarkana Oct. 8, 2020, no pet.), where a stepfather raised a boy who called him Dad. Birthday cards, holiday cards, photographs, and testimony documented their close relationship. The stepfather sometimes referred to him as his son, and they publicly presented themselves as family. Nevertheless, the court upheld the finding against adoption by estoppel, explaining that "that emotional bond alone does not support a finding of adoption absent evidence of an agreement or contract to adopt Hilton." *Maniscalco*, 2026 WL 3210414, at *14 (quoting *Hines*, 2020 WL 5948803, at *6).

The First Court then analyzed *In re Schwab*, 739 S.W.3d 325 (Tex. App.—Corpus Christi–Edinburg 2026, no pet.), which involved even more explicit documentary references. Carmen took her stepfather's surname, called him her father, and appeared as his daughter on his death certificate. A family obituary identified her as a granddaughter, demonstrating even extended family considered her James' daughter. Yet the court concluded that these documents did "not represent an agreement by James to adopt Carmen." Instead, they demonstrated that Carmen and her stepfather shared a strong familial bond. Her biological father's lack of consent, together with the absence of evidence of abandonment, further undermined her claim. *Maniscalco*, 2026 WL 3210414, at *14–15. The opinion also cited *In re Whiting*, where identifying a stepdaughter as a dependent on benefits applications failed to establish an agreement to adopt. *Id.* at *14 n.25.

The evidence in *Hines* and *Schwab* primarily established close familial relationships, which addressed only one element of adoption by estoppel: the child's performance through love, affection, and services. Neither claimant established the other essential element: an agreement to adopt. Thus, the relationships could possess all the emotional significance of a parent-child bond without satisfying the contractual requirement for adoption by estoppel.

Jack offered evidence beyond familial labels. Norma testified that Gene expressly agreed to adopt her sons, and Gene's will called Jack his child. But the jury could weigh that testimony against the divorce pleadings, continued efforts to obtain support from Jack's biological father, and testimony from Gene's relatives. As the First Court explained, "the jury reasonably could have concluded … that Gene and Norma did not have an agreement for Gene to adopt Jack." *Id.* at *15.

Importantly, the First Court did not hold that Jack's evidence was legally insufficient to establish adoption by estoppel. Jack challenged the jury's adverse finding for factual insufficiency. Instead, the First Court concluded that the jury's finding was not "so against the great weight and preponderance of the evidence that it is clearly wrong and unjust." *Id.* at *12–15 (citing *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001)). It did not independently determine that Gene and Jack lacked a meaningful father-son relationship or that Jack's evidence could never support adoption by estoppel, only that the jury's finding would not be disturbed.

Jack lost his inheritance, but recovered $406,133 in attorney's fees.

Jack lost his claim to inherit from Gene's estate, yet recovered $406,133.08 in attorney's fees from that same estate in pursuing his claim pursuant to Texas Estates Code section 352.052(b). That award resulted from the jury's separate finding that Jack pursued probate of Gene's will in good faith and with just cause, notwithstanding its rejection of his adoption claim. Darren and Richard Womack challenged the fee award on cross-appeal, arguing that Jack lacked the necessary status as a beneficiary and that his unsuccessful adoption claim could not support fees. *Id.* at *15–17.

In upholding the attorney's fees award, the First Court emphasized that "Section 352.052 refers to a party who is designated in a will or alleged will as a beneficiary, not someone who actually recovers under the will." *Id.* at *16. Gene's will expressly designated Jack as a beneficiary. Although the divorce and adverse adoption finding prevented Jack from inheriting, they did not eliminate his designation for purposes of Section 352.052(b). The court found the brothers' contrary argument under Section 123.001 unpreserved and explained that it would fail on the merits regardless. *Id.* at *15–16.

After resolving that statutory interpretation issue, the remaining question for the First Court concerned whether Jack prosecuted his claim in good faith and with just cause. The jury charge defined good faith as an action "prompted by honesty of intention or a reasonable belief that the action was probably correct." Just cause required "reasonable grounds" and a "fair and honest cause or reason for the actions." *Id.* at *17. Unlike the adoption question, this inquiry concerned the reasonableness of Jack's decision to litigate, not whether he ultimately proved an adoption agreement.

The First Court rejected the argument that losing the adoption claim necessarily defeated the fee award. As the court explained, it could not "reverse the attorneys' fee award merely because the jury found that Jack was not adopted by estoppel." *Id.* at *18.

The court also upheld the jury's finding under both legal and factual sufficiency review. Gene's will, Norma's testimony about the adoption agreement, decades of family activities, photographs, and evidence that Gene identified Jack as his son supported a finding that Jack had reasonable grounds to prosecute the claim. Although the divorce pleadings, absence of formal adoption, and contrary testimony supported the adverse adoption finding, they did not compel a finding that Jack acted dishonestly or without just cause. The court concluded that the jury's finding of good faith was "not so contrary to the overwhelming weight of the evidence that it is clearly wrong and unjust." *Id.* at *18–19. Jack lost the overall case, but still recovered his significant attorney's fees from the estate.