

STATE OF MICHIGAN
COURT OF APPEALS

In re JOSHUA DAVID SAYLOR.

JOSHUA DAVID SAYLOR,

Petitioner-Appellant,

v

DONALD SAYLOR and PAULA SAYLOR,

Respondents-Appellees,

and

TERRY WELSH, HEATHER IRENE CHRIST
EMMING, and STACY CATHERINE CHRIST,

Intervening Appellees.

UNPUBLISHED
December 22, 2005

No. 256521
Oakland Probate Court
LC No. 89-023995-AD

Before: Whitbeck C.J., and Talbot and Murray, JJ.

PER CURIAM.

Petitioner Joshua David Saylor appeals as of right from a probate court order denying his petition to set aside a 1989 order of adoption, pursuant to which petitioner became the adopted son of respondents Donald and Paula Saylor.¹ We affirm.

Petitioner contends that the adoption procedure violated due process guarantees because neither he nor his adoptive parents received notice before entry of the adoption order that he would be divested of his right to inherit from his natural parents and their legal heirs. Petitioner seeks to set aside the 1989 adoption so that he may inherit the estate of his deceased natural father's mother, Meredith Siebert, who died intestate in July 2003.² This issue involves

¹ Intervening appellees became involved in this case because, if petitioner's motion were granted, it would affect their rights to inherit from petitioner's paternal grandmother.

² According to petitioner, he is the closest blood relation of his deceased grandmother, and the
(continued...)

questions of constitutional law and statutory interpretation, which we consider de novo. *Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 9, 30; 654 NW2d 610 (2002).

“Determinations of heirs are to be governed by statutes in effect at the time of death, and an adoption statute in effect at the time of death is controlling.” *In re Adolphson Estate*, 403 Mich 590, 593; 271 NW2d 511 (1978) (citations omitted). The parties do not dispute that petitioner’s paternal grandmother died intestate in July 2003, at which time the Estates and Protected Individuals Code, MCL 700.1101 *et seq.*, provided, in relevant part, as follows concerning the effect of an adoption on a child’s right to inherit:

(1) *Except as provided in subsections (2), (3), and (4), for purposes of intestate succession by, through, or from an individual, an individual is the child of his or her natural parents, regardless of their marital status. . . .*

* * *

(2) *An adopted individual is the child of his or her adoptive parent or parents, and not of his or her natural parents, but adoption of a child by the spouse of either natural parent has no effect on either the relationship between the child and that natural parent or, except as provided in subsection (3), the right of the child or a descendant of the child to inherit from or through the other natural parent. An individual is considered to be adopted for purposes of this subsection when a court of competent jurisdiction enters an interlocutory decree of adoption that is not vacated or reversed. [2000 PA 54, MCL 700.2114 (emphasis added).]*

The Michigan Adoption Code, MCL 710.21 *et seq.*, similarly sets forth the following regarding an adoptee’s inheritance rights:

(1) After the entry of the order of adoption, the adoptee shall, in case of a change of name, be known and called by the new name. The person or persons adopting the adoptee then stand in the place of a parent or parents to the adoptee in law in all respects as though the adopted person had been born to the adopting parents and are liable for all the duties and entitled to all the rights of parents.

(2) After entry of the order of adoption, there is no distinction between the rights and duties of natural progeny and adopted persons, and *the adopted person becomes an heir at law of the adopting parent or parents, and an heir at law of the lineal and collateral kindred of the adopting parent or parents. After entry of the order of adoption, an adopted child is no longer an heir at law of a parent whose rights have been terminated under this chapter or chapter XIIA or the lineal or collateral kindred of that parent, nor is an adopted adult an heir at law of a person who was his or her parent at the time the order of adoption was entered or the lineal or collateral kindred of that person, except that a right, title,*

(...continued)

only other relations of his deceased grandmother are her great nieces, the intervening appellees.

or interest vesting before entry of the final order of adoption is not divested by that order. [MCL 710.60 (emphasis added).]

Petitioner acknowledges that the plain language of these statutes precludes him from inheriting intestate the estate of his natural father's mother. Petitioner also concedes that his appeal does not assert the facial unconstitutionality of MCL 700.2114 or MCL 710.60, but only that as applied in this case, the statutes deprive him of procedural due process. Petitioner cites several Michigan cases in support of the proposition that in other comparable circumstances, Michigan courts have ignored the legal effect of plain statutory language regarding adoption and invoked equity as a basis for rectifying an otherwise unjust legal result. See *Roberts v Sutton*, 317 Mich 458; 27 NW2d 54 (1947); *In re Gunn's Estate*, 227 Mich 368; 198 NW 983 (1924); *Wright v Wright*, 99 Mich 170; 58 NW 54 (1894).³ But all three cases on which petitioner's argument rests involved distinct circumstances, specifically the Supreme Court's upholding on the basis of equitable considerations (estoppel, implied contract) statutorily defective adoptions against challengers arguing that the adoptee could not inherit from the adoptive parents. None of the cases suggest that a lack of notice regarding statutory postadoption rights to inherit might violate due process.

Apart from the fact that petitioner offers no authority supporting his position, we conclude that no due process violation occurred during the 1989 adoption. Regarding petitioner's contention that, without notice, MCL 700.2114 and 710.60 deprived him of his property right to inherit from his paternal grandmother, it is fundamental that "[a] state may not deprive any person of life, liberty, or property without due process. US Const, Am XIV."⁴ *Tolksdorf v Griffith*, 464 Mich 1, 7; 626 NW2d 163 (2001). The Due Process Clauses protect vested property rights, or those in which a person has "a legitimate claim of entitlement," not a person's mere unilateral desire or expectation to a claimed interest. *York v Civil Service Comm*, 263 Mich App 694, 702-703; 689 NW2d 533 (2004).

³ Petitioner also relies on *In re Leach*, 373 Mich 148; 128 NW2d 475 (1964), as a basis for his contention "that equity may hear a truly demanding claim to set aside an adoption." In *Leach*, however, which involved the adoptive parents' motion to set aside the ten-year-old adoption of their daughter on the basis that the state had failed to disclose the extent of their daughter's mental illness, the Supreme Court noted that Michigan statutes contemplated only such a motion for revocation within three months after the adoption, and the Court expressly rejected the parents's appeal to equity as a ground for setting aside the adoption. *Id.* at 149-152.

Although petitioner also relies on *Leach* to support his assertion that sometimes a child's best interests dictate setting aside an adoption, the Supreme Court in *Leach* affirmed the trial court's rejection of the petitioners' claim that the adoptee's best interests "dictated that the adoption . . . be set aside." *Id.* at 151. The Supreme Court in *Leach* simply did not proclaim that a child's best interests may trump clear statutory language. Furthermore, unlike this case, *Leach* involved the adoptive parents' allegations that the adoption had been fraudulently procured. *Id.* at 150-152.

⁴ The Michigan Constitution's due process guarantee, Const 1963, art I, § 17, affords no greater protection than the federal due process guarantee. *English v Blue Cross Blue Shield of Michigan*, 263 Mich App 449, 459; 688 NW2d 523 (2004).

Although petitioner suggests that at the time of his adoption he should have received notice that entry of the adoption would divest him of his right to inherit from his paternal grandmother, petitioner did not possess a vested right to inherit from his paternal grandmother's estate at the time of the adoption. The right to inherit property through either a will or the intestacy laws vests, and becomes more than a mere expectancy, on the death of the estate holder. *In re Finlay Estate*, 430 Mich 590, 600-601; 424 NW2d 272 (1988) (explaining that "potential heirs and legatees do not have a right in an estate until the testator dies"); *In re Adolphson Estate*, *supra* at 593 (observing that "[d]eterminations of heirs are to be governed by statutes in effect at the time of death," and that "an adoption statute in effect at the time of death is controlling"); *In re Dempster's Estate*, 247 Mich 459, 462; 226 NW 243 (1929) (quoting *In re Pivonka's Estate*, 202 Iowa 855; 211 NW 246 (1926), for the proposition that the "heirs of a decedent are, under the laws of this State, to be determined by ascertaining upon whom the law casts the estate immediately upon the death of the ancestor"). In this case, petitioner's paternal grandmother was alive in 1989, and therefore, at the time of petitioner's adoption, he possessed no vested property right to inherit from her that due process could have protected. Consequently, petitioner's contention that the entry of the adoption order without notice of the potential future inheritance consequences deprived him of his property right to inherit from his paternal grandmother lacks merit.

Affirmed.

/s/ William C. Whitbeck
/s/ Michael J. Talbot
/s/ Christopher M. Murray