

**IN THE COURT OF APPEALS OF IOWA**

No. 8-778 / 08-0120  
Filed November 13, 2008

**IN THE MATTER OF THE ESTATE OF  
CHRISTINE THOMPSON, Deceased,**

**PAMELA JONES, Administrator of the  
Estate of CHRISTINE THOMPSON,  
Appellant.**

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Appeal from the Iowa District Court for Polk County, Ruth B. Klotz,  
Associate Probate Judge.

Pamela Jones appeals from the district court's order for determination of  
heirship. **AFFIRMED.**

Matthew Gardner of Sullivan & Ward, P.C., West Des Moines, for  
appellant.

Wayne Wilson of Wilson, Deege, Dollar, Despotovich & Riemenschneider,  
West Des Moines, for appellee.

Considered by Huitink, P.J., and Vogel and Eisenhauer, JJ.

**VOGEL, J.**

Pamela Jones appeals from the district court's order on her application for determination of heirship. She asserts that pursuant to the theory of adoption by estoppel or equitable adoption, she should be treated as an heir of Christine Thompson. Our review is de novo. Iowa R. App. P. 6.4.

A person claiming to inherit under the theory of adoption by estoppel or equitable adoption has the burden to prove (1) an unexecuted agreement or contract to adopt entered into by the decedent, and (2) performance by the adopted child. *In re Painter's Estate*, 246 Iowa 307, 310, 67 N.W.2d 617, 619 (1954); see also Am. Jur. 2d *Adoption* § 62, at 782-83 (2004) (stating that an element of adoption by estoppel is "an agreement to adopt the child or an undertaking to effect statutory adoption"); 2 C.J.S. *Adoption of Persons* § 31, at 292 (2003) (stating that one element to establish an equitable adoption is "an agreement between the adoptive parent and the natural parents").

We agree with the district court that Pamela did not establish an equitable adoption as she failed to prove that Christine entered into an agreement or contract to adopt Pamela. When Pamela was four years old, her father married Christine and subsequently, Christine and Pamela shared a close and loving mother-daughter relationship. As the district court found, it is clear that "[Christine] treated Pamela as she would have treated her own child and that [Pamela] treated [Christine] as if she were [her] own mother." However, under neither our statutory nor case law is this sufficient to prove an agreement or contract regarding adoption. *Painter's Estate*, 246 Iowa at 310, 67 N.W.2d at 619; see 2 C.J.S. *Adoption of Persons* § 31, at 292-93 (2003) (discussing that it

is against public interest to apply the doctrine of equitable adoption to stepparents).

Christine died intestate and with no surviving issue under Iowa Code section 633.219(1) (2007),<sup>1</sup> her estate passes under the provisions of Iowa Code section 633.219(3).<sup>2</sup> As a result, Christine's relatives in Germany who had little contact with her will inherit the estate, including the property Christine received from Pamela's father's estate. While this seems unfair, considering the decades-long, close relationship Christine and Pamela enjoyed, we cannot fix this problem as there is no Iowa case law or statutory authority to do so. Any changes to our law must be done by the legislature. The district court set forth a very thorough recitation of the appropriate facts and applied the appropriate law; thus, we affirm pursuant to Iowa Court Rule 21.29 (1)(d) and (e).

**AFFIRMED.**

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<sup>1</sup> Under Iowa Code section 633.219(1), if there is no surviving spouse, the estate passes "[t]o the issue of the decedent per stirpes." See Iowa Code § 633.3(24) (defining issue as "all lawful lineal descendants of a person, whether biological or adopted . . .").

<sup>2</sup> Under Iowa Code section 633.219(3), if there is no surviving spouse, issue, or parents of the decedent:

[T]he estate shall be divided and set aside into two equal shares. One share shall be distributed to the issue of the decedent's mother per stirpes and one share shall be distributed to the issue of the decedent's father per stirpes. If there are no surviving issue of one deceased parent, the entire estate passes to the issue of the other deceased parent in accordance with this subsection.