

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2012 CA 0340**

**IN THE MATTER**

**OF THE**

**SUCCESSION OF JAMES BROWN**

Judgment Rendered: **FEB 25 2013**

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On Appeal from the 19th Judicial District Court  
In and for the Parish of East Baton Rouge  
State of Louisiana  
Docket No. 88,291, Section 27

The Honorable Todd W. Hernandez, Judge Presiding

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**BEFORE: PARRO, HUGHES, AND WELCH, JJ.**

*Welch J. concurs in result only  
Parro, J., concurs.*

**HUGHES, J.**

This is an appeal by James Gray of a judgment rendered in favor of James Gray, Roosevelt Brown, and Effie Daisy Lee Brown. For the following reasons, we affirm.

**FACTS AND PROCEDURAL HISTORY**

This appeal arises from a judgment rendered in the matter of the Succession of James Brown. Mr. Brown died intestate on May 30, 2000. On June 24, 2008 Mr. James Gray obtained a judgment of possession recognizing him as the sole heir of James Brown and placing him in possession of the entire estate of James Brown. He obtained that judgment *ex parte* upon the filing of a verified petition and an affidavit of death and heirship signed by him and his mother. Immediately after the judgment was rendered, Mr. Gray instituted eviction proceedings against Ms. Willie Mae Franklin, who had been living in Mr. Brown's home since his death in 2000 and claimed to be Mr. Brown's daughter.

Ms. Franklin filed a petition to annul the judgment of possession and for temporary, preliminary, and permanent injunction. In those pleadings, Ms. Franklin disputed the facts set forth in Mr. Gray's petition and affidavit, and sought to annul the judgment of possession due to alleged fraud and ill practices on the part of Mr. Gray.

Mr. Gray filed an exception raising the objection of no right of action. He argued that Ms. Franklin lacked the legal interest necessary to bring the nullity action, because she did not allege facts sufficient to establish that Mr. Brown had either married her mother or formally acknowledged her as his daughter. Thus, Mr. Gray concluded that Ms. Franklin could not establish that she was an heir of Mr. Brown with a right of action to oppose the judgment of possession.

Ms. Effie Daisy Lee Brown<sup>1</sup> and Mr. Roosevelt Brown subsequently joined in the nullity action and also claimed to be children of Mr. Brown. Willie Mae, Effie, and Roosevelt all disputed that Mr. Gray was an heir of the decedent, and alleged that Mr. Gray had not provided the requisite proof either that his mother was married to Mr. Brown or that Mr. Brown had acknowledged him.

Subsequently, Mr. Gray's exception of no right of action as to Ms. Franklin was sustained.<sup>2</sup> He then filed a rule to show cause why he should not be placed into possession of Mr. Brown's estate. After a hearing, a judgment was rendered wherein Mr. Gray was again sent into possession of Mr. Brown's estate. No action on Effie and Roosevelt's petition to annul was taken, and they then filed a petition to vacate the judgment of possession and to re-open the succession of James Brown. A judgment was rendered re-opening the succession.

A trial was held that resulted in the final judgment before us on appeal, which was signed on November 10, 2011. Pursuant to that judgment, James Gray, Roosevelt Brown, and Effie Daisy Lee Brown "are all children and legal heirs of the decedent, James Brown" and entitled to share in the estate of James Brown. In support of its findings, the court stated in written reasons for judgment that Roosevelt and Effie had "sufficiently proven that they were acknowledged by James Brown, [as] he is listed on their birth certificates and he took no action to disavow them." Mr. Gray has appealed the judgment, alleging that the trial court erred in finding that Roosevelt and Effie were heirs of Mr. Brown. Although Mr.

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<sup>1</sup> Although Ms. Brown's middle name is referred to as Daisy Lee throughout the record, her birth certificate lists her middle (or second) name as "Desie Lee."

<sup>2</sup> The judgment on the exception was not appealed and Ms. Franklin has not answered the instant appeal. As such, the court's ruling on that issue is final and is not before us for review.

Gray did not prevail at the trial, Mr. Gray also assigns error to the trial court's failure to award him damages and attorney's fees.<sup>3</sup>

### LAW AND ANALYSIS

The parties to this action claim to be the descendants and heirs of Mr. Brown, entitled to succeed to his property. See LSA-C.C. arts. 880, 888 and 1096. There are three ways to prove the existence of a parent-child relationship under the Louisiana Civil Code: (1) legitimate filiation; (2) acknowledgment; and (3) the institution of a legal proceeding to prove filiation. See LSA-C.C. arts. 185, 196, and 197.

Legitimate filiation exists when the mother's husband is the parent of the child and acknowledges the child as his own. Under Article 185, a child born to a mother during her marriage to a man is presumed to be the child of the husband. If the parents are not married, a father must acknowledge his child in order to establish the relationship. Louisiana Civil Code article 196 provides:

A man may, by authentic act or by signing the birth certificate, acknowledge a child not filiated to another man. The acknowledgement creates a presumption that the man who acknowledges the child is the father. The presumption can be invoked only on behalf of the child. Except as otherwise provided in custody, visitation, and child support cases, the acknowledgement does not create a presumption in favor of the man who acknowledges the child.

Finally, in the absence of a marriage between the parents or an acknowledgment by the father, a child could establish filiation by virtue of a civil proceeding. For purposes of succession, a filiation proceeding is subject to a preemptive period of one year which commences to run from the date of death of the alleged father. LSA-C.C. art. 197.

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<sup>3</sup> Based on our conclusion herein, we find no merit to this assignment of error.

In this case, Mr. Gray submits that the mother of Roosevelt and Effie was never married to Mr. Brown. Further, Roosevelt and Effie did not institute a filiation proceeding. Because Mr. Brown died in 2000, well over one year ago, they are time-barred from doing so now. Thus, Mr. Gray argues that the only remaining method by which Roosevelt or Effie could prove filiation is by formal acknowledgment.

Under Article 196, a man may acknowledge his child by an authentic act in which he specifically acknowledges his paternity or by his signing the child's birth certificate as father. LSA-C.C. art. 196, Revision Comments – 2005, Comment (a). An acknowledgment creates a presumption that he is the father and that presumption operates in favor of the child. There is no time period during which an action to challenge the presumption of this Article must be instituted. LSA-C.C. art. 196, Revision Comments – 2005, Comment (d).

Certified copies of the birth certificates of Roosevelt and Effie were introduced at the trial. See LSA-R.S. 40:42. Both birth certificates list James Brown as the father. Even though Article 196 refers to “signing” the birth certificate, the certificates of live birth issued by the State of Louisiana introduced as evidence in this case do not contain signature lines. They do contain certifications with the following language:

The above is a true certification of name and birth facts on file in the vital records registry of the State of Louisiana, pursuant to LSA-R.S. 40:32, *et seq.*<sup>4</sup>

The certificates of live birth naming James Brown as the father of Effie and Roosevelt, stamped with the seal of the Louisiana Department of Health and Hospitals and containing the signature of the State Registrar,

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<sup>4</sup> A second certificate of live birth introduced on behalf of Roosevelt Brown contains a slightly different certification and the names of the mother and father are hand written although not specified as signatures.

together with the testimony of Roosevelt that Effie was his sister and that James was their father, were not rebutted at trial. We thus find no error in the trial court's finding that Roosevelt and Effie are heirs of the decedent, James Brown.

### **CONCLUSION**

For the foregoing reasons, the judgment on appeal is affirmed. Costs of this appeal are assessed to the plaintiff/appellant, Mr. James Gray.

**AFFIRMED.**