

Judgment rendered June 26, 2019.  
Application for rehearing may be filed  
within the delay allowed by Art. 2166,  
La. C.C.P.

No. 52,768-CA

COURT OF APPEAL  
SECOND CIRCUIT  
STATE OF LOUISIANA

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SUCCESSION OF  
JACOB BURG ADAMS

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Appealed from the  
First Judicial District Court for the  
Parish of Caddo, Louisiana  
Trial Court No. 599722

Honorable Michael A. Pitman, Judge

\* \* \* \* \*

CARL HENRY FRANKLIN

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Diane Peoples, Legatee

LAW OFFICES OF  
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Counsel for Appellee,  
Nancy R. Megas,  
Independent Executrix of  
the Succession of  
Jacob Burg Adams

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By: David A. Szwak

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Before WILLIAMS, GARRETT, and COX, JJ.

**COX, J.**

This appeal arises from the First Judicial District Court, Caddo Parish, Louisiana. Diane Peoples appeals the district court's judgment granting a motion for summary judgment in favor of Nancy Megas, Independent Executrix of the Succession of Jacob Burg Adams, and holding that wrongful death and survival claims are outside the scope of succession assets. For the following reasons, we affirm the district court's judgment.

**FACTS**

Jacob Burg Adams died on August 18, 2016, while residing at the Bradford Rehabilitation Center/Senior Care Center ("Bradford") in Shreveport, Louisiana. Prior to his death, Mr. Adams contracted asbestosis and mesothelioma and filed a petition seeking to recover damages related to his illness.<sup>1</sup> Mr. Adams left a last will and testament dated June 2, 2016.

The disputed portion of his will reads as follows:

I give all my rights, title and interest in the claim being handled by The Lanier Law Firm, should the claim be pending at my death in the following percentages: my sister Nancy Megas, 20%; my nephew Dan Bennett 50%; and, Diane Peoples, 30%.

...

If said claim has been liquidated as of the date of my death, I give all of the remaining proceeds in the following percentages: Nancy Megas, 20%, Dan Bennett, 50% and Diane Peoples, 30%.

He left the remainder of his estate to his sister, Ms. Megas, and his nephew, Mr. Bennett, in equal portions. This remainder of his estate is not in dispute.

On March 30, 2017, Ms. Megas filed a petition to probate Mr. Adams's will and for appointment as independent executrix, and the order

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<sup>1</sup> Mr. Adams's lawsuit was filed in the Civil District Court for the Parish of Orleans, Case No. 2016-2376, Jacob Burg Adams v. A.W. Chesterton, Co., et al.

appointing her as such was signed by the district court on the same day. On February 28, 2018, Ms. Megas, as independent executrix, filed a petition to strike and nullify legacy. She claimed that Mr. Adams's June 2, 2016 will, which included a legacy to Ms. Peoples, was executed four months after his previous last will and testament, which did not include a legacy to Peoples.

Ms. Megas stated that Ms. Peoples was employed at the Bradford when Mr. Adams arrived there, and she was assigned to care for him. She claimed that based on Ms. Peoples's duties, she had more access to Mr. Adams than his family. She alleged that Ms. Peoples exercised an "extreme degree of control and influence over [Mr. Adams] in an effort to alienate [him] from his relatives[.]" The petition requested the court declare the purported legacy to Ms. Peoples to be a nullity.

After Mr. Adams's death, his mesothelioma lawsuit was amended, and wrongful death and survival damage claims were asserted by his siblings. The lawsuit was subsequently settled.

On June 12, 2018, Ms. Megas, as independent executrix, filed a motion for summary judgment asserting that as a matter of law, the wrongful death and survival claims were outside the scope of Adams's succession assets and should be excluded from the sworn descriptive list of estate assets. Following a hearing on the motion, the district court granted Ms. Megas's motion for summary judgment. Ms. Peoples now appeals.

## **DISCUSSION**

Ms. Peoples argues the trial court erred in granting Ms. Megas's motion for summary judgment and holding that wrongful death and survival damage claims are outside the scope of succession assets. It is her

contention that Mr. Adams's clear intent is not obstructed by La. C.C. art. 2315.1 or 2315.2 because he filed his lawsuit prior to his death.

This matter came before the district court on a motion for summary judgment. Appellate courts review summary judgments de novo, using the same criteria that govern the district court's consideration of whether summary judgment is appropriate. *Perkins v. Air U Shreveport, LLC*, 52,093 (La. App. 2 Cir. 5/23/18), 249 So. 3d 187.

La. C.C. art. 2315.1, Survival action, states, in pertinent part:

A. If a person who has been injured by an offense or quasi offense dies, the right to recover all damages for injury to that person, his property or otherwise, caused by the offense or quasi offense, shall survive for a period of one year from the death of the deceased in favor of:

- (1) The surviving spouse and child or children of the deceased, or either the spouse or the child or children.
- (2) The surviving father and mother of the deceased, or either of them if he left no spouse or child surviving.
- (3) The surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving.
- (4) The surviving grandfathers and grandmothers of the deceased, or any of them, if he left no spouse, child, parent, or sibling surviving.

B. In addition, the right to recover all damages for injury to the deceased, his property or otherwise, caused by the offense or quasi offense, may be urged by the deceased's succession representative in the absence of any class of beneficiary set out in Paragraph A.

C. The right of action granted under this Article is heritable, but the inheritance of it neither interrupts nor prolongs the prescriptive period defined in this Article.

La. C.C. art. 2315.2, Wrong death action, states, in pertinent part:

A. If a person dies due to the fault of another, suit may be brought by the following persons to recover damages which they sustained as a result of the death:

(1) The surviving spouse and child or children of the deceased, or either the spouse or the child or children.

(2) The surviving father and mother of the deceased, or either of them if he left no spouse or child surviving.

(3) The surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving.

(4) The surviving grandfathers and grandmothers of the deceased, or any of them, if he left no spouse, child, parent, or sibling surviving.

B. The right of action granted by this Article prescribes one year from the death of the deceased.

C. The right of action granted under this Article is heritable, but the inheritance of it neither interrupts nor prolongs the prescriptive period defined in this Article.

To recover under a claim for wrongful death and survival damages, a plaintiff must fall within the class of persons designated as a beneficiary under La. C.C. arts. 2315.1 and 2315.2. *Washington v. Magnolia Manor Nursing Home & Rehab., L.L.C.*, 51,899 (La. App. 2 Cir. 3/28/18), 247 So. 3d 156, *writs denied*, 2018-0682 (La. 8/31/18), 251 So. 3d 413, 2018-0666 (La. 8/31/18), 251 So. 3d 414, 2018-0685 (La. 8/31/18), 251 So. 3d 414.

When a party dies during the pendency of an action which is not extinguished by his death, his legal successor may have himself substituted for the deceased party, on ex parte written motion supported by proof of his quality. La. C.C.P. art 801. As used in Articles 801 through 804, “legal successor ” means:

(1) The survivors designated in Article 2315.1 of the Civil Code, if the action survives in their favor; and

(2) Otherwise, it means the succession representative of the deceased appointed by a court of this state, if the succession is under administration therein; or the heirs and legatees of the deceased, if the deceased's succession is not under administration therein.

Article 2315.1 is a specific statute with the purpose of providing for the transfer of the ownership of a tort cause of action when the tort victim-obligee dies prior to, or during the pendency of, litigation. Article 2315.1 clearly and unambiguously transmits the particular tort cause and right of action to designated classes of beneficiaries after the death of the tort victim without the necessity of a succession proceeding. The successors (beneficiaries) of the obligee who have the right of action to enforce the cause of action are specifically listed in Article 2315.1 A(1) through (4). *Rainey v. Entergy Gulf States, Inc.*, 2001-2414 (La. App. 1 Cir. 6/25/04), 885 So. 2d 1193, *writs denied*, 2004-1878 (La. 11/15/04), 887 So. 2d 478, 2004-1883 (La. 11/15/04), 887 So. 2d 479, 2004-1884 (La. 11/15/04), 887 So. 2d 479.

That the wrongful death and survival actions are wholly creatures of the legislature is recognized historically and jurisprudentially. *Levy v. State Through Charity Hosp. of La. at New Orleans Bd. of Adms.*, 253 La. 73, 216 So. 2d 818 (1968); *Estate of Burch v. Hancock Holding Co.*, 2009-1839 (La. App. 1 Cir. 5/7/10), 39 So. 3d 742. The wrongful death and survival actions are considered *sui generis* and thus are not subject to the law of marriage, of parent and child, of inheritance, nor required to conform to civil law concepts. *Levy, supra*; *Estate of Burch, supra*. Neither the survival action nor the wrongful death action provides rights that are transmitted from the tort victim to the victim's heirs in an inheritance sense. *Estate of Burch*,

*supra*. These rights do not pass through the victim's succession. Rather, these rights are granted by special statute to specified survivors in order of exclusionary preference, and in the absence of any of the specified survivors, the rights are not transmitted to any other persons. *Id.*

Based on Article 2315.1 and jurisprudence, we find that Ms. Peoples's argument lacks merit. The trial court did not err in applying the law as it is clearly written. Ms. Peoples is not related to Mr. Adams and is not his succession representative; therefore she is not within a category of persons to which the survival action attaches. It is Mr. Adams's siblings who are in the proper category of beneficiaries. Additionally, jurisprudence states that a personal injury claim does not follow the law of inheritance and does not form a part of the victim's estate. The portion of Mr. Adams's will attempting to bequeath a percentage of his pending lawsuit is therefore without effect and must be stricken.

### **CONCLUSION**

For the foregoing reasons, we affirm the district court's granting of Nancy Megas's motion for summary judgment, holding wrongful death and survival claims are not categorized as succession assets. Costs of this appeal are assessed to the appellant, Diane Peoples.

**AFFIRMED.**