

# Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 30th day of June, 2021 are as follows:

**BY Weimer, C.J.:**

2020-CA-00313

*KHRISTY GOINS RISMILLER, TUTRIX FOR DANIEL EDWARD GOINS VS. GEMINI INSURANCE COMPANY, MARK ISIAH GORDON AND KEITH BOONE TRUCKING, LLC C/W DAVID WATTS VS. MARK GORDON, KENNETH BOONE dba BOONE TRUCKING, KEITH BOONE TRUCKING AND GEMINI INSURANCE COMPANY C/W SHEILA SMITH VS. GEMINI INSURANCE COMPANY, KENNETH CHAD BOONE D/B/A BOONE TRUCKING, AND MARK GORDON C/W SUCCESSION OF RICHARD STEWART, JR., RAYMOND KELLY, DONNA KELLY, RICHARD STEWART, SR. AND VERA ANITA STEWART VS. MARK ISIAH GORDON, KENNETH BOONE, KEITH BOONE TRUCKING, LLC AND GEMINI INSURANCE COMPANY (Parish of Concordia)*

ORIGINAL DECREE VACATED; JUDGMENT OF THE DISTRICT COURT REVERSED; JUDGMENT RENDERED; PEREMPTORY EXCEPTION SUSTAINED AND CLAIMS DISMISSED. SEE OPINION.

Hughes, J., dissents for the reasons assigned by Justice Griffin.

Genovese, J., dissents for the reasons assigned in the original opinion and for the reasons assigned by Justice Griffin.

Griffin, J., dissents and assigns reasons.

06/30/2021

**SUPREME COURT OF LOUISIANA**

**No. 2020-CA-00313**

**KHRISTY GOINS RISMILLER, TUTRIX FOR DANIEL EDWARD GOINS  
VS.  
GEMINI INSURANCE COMPANY, MARK ISIAH GORDON AND KEITH  
BOONE TRUCKING, LLC**

**C/W**

**DAVID WATTS  
VS.  
MARK GORDON, KENNETH BOONE dba BOONE TRUCKING, KEITH  
BOONE TRUCKING AND GEMINI INSURANCE COMPANY**

**C/W**

**SHEILA SMITH  
VS.  
GEMINI INSURANCE COMPANY, KENNETH CHAD BOONE D/B/A  
BOONE TRUCKING, AND MARK GORDON**

**C/W**

**SUCCESSION OF RICHARD STEWART, JR., RAYMOND KELLY,  
DONNA KELLY, RICHARD STEWART, SR. AND  
VERA ANITA STEWART  
VS.  
MARK ISIAH GORDON, KENNETH BOONE, KEITH BOONE  
TRUCKING, LLC AND GEMINI INSURANCE COMPANY**

*On Appeal from the 7th Judicial District Court, Parish of Concordia  
On Rehearing*

**WEIMER, C.J.**

The case is before this court on rehearing on request of defendant Gemini Insurance Company. At issue is the holding in this court’s original opinion that, “based on the clear and unambiguous wording of La. C.C. arts. 2315.1 and 2315.2,”

two adult children (Daniel Goins and David Watts) who were given in adoption as minors “are ‘children of the deceased’ and ‘brothers of the deceased’ who are permitted to bring wrongful death and survival actions arising from the death of their biological father and half-siblings.” **Rismiller v. Gemini Insurance Co.**, 20-0313, p. 2 (La. 12/11/20), \_\_\_ So.3d \_\_\_. Based on this finding, the majority of this court affirmed the district court’s overruling of the defendant’s peremptory exception raising the objection of no right of action and remanded the matter to the district court for further proceedings. *Id.*, 20-0313 at 11, \_\_\_ So.3d at \_\_\_. Defendant’s application for rehearing was granted to reconsider the correctness of this holding.

### CODAL ANALYSIS

As stated in the dissent to the court’s original opinion, a determination of whether children given in adoption have a right to bring wrongful death and survival actions in connection with the deaths of a biological parent and half-sibling “requires an intricate civilian analysis of multiple provisions of the Louisiana Civil Code.” **Rismiller**, 20-0313 at 1, \_\_\_ So.3d at \_\_\_ (Weimer, J., dissenting). “The codal question here is whether the plaintiffs are ‘children’ for purposes of a right to bring a wrongful death and survival action under La. C.C. arts. 2315.1 and 2315.2.” *Id.*, 20-0313 at 3, \_\_\_ So.3d at \_\_\_ (Weimer, J., dissenting). The resolution of this issue requires “an examination of how adoption affects the construction” of La. C.C. arts. 2315.1 and 2315.2; therefore, consideration must be given to La. C.C. art. 199, which “speaks directly to the effects of adoption.”<sup>1</sup> *Id.*, 20-0313 at 12 & 17, \_\_\_ So.3d at \_\_\_ & \_\_\_ (Weimer, J., dissenting).

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<sup>1</sup> Because La. C.C. arts. 199, 2315.1, and 2315.2 are interrelated laws, each must be given effect. See **Rismiller**, 20-0313 at 12, \_\_\_ So.3d at \_\_\_ (Weimer, J., dissenting).

Because an interpretation of the relevant codal provisions was thoroughly discussed in the dissenting opinion, an in-depth discussion of the codal issues will not be duplicated herein. See **Rismiller**, 20-0313 at 3-12, \_\_\_ So.3d at \_\_\_ (Weimer, J., dissenting). Rather, after further evaluation and analysis,<sup>2</sup> the dissent is adopted as the opinion of the court, which is briefly summarized below.

“The fundamental question in all cases of [codal] construction is legislative intent and the reasons that prompted the legislature to enact the law.” *Id.*, 20-0313 at 3 \_\_\_ So.3d at \_\_\_ (quoting **SWAT 24 Shreveport Bossier, Inc. v. Bond**, 00-1695, p. 11 (La. 6/29/01), 808 So.2d 294, 302). “The analysis begins, as it must, with the codal text”—La. C.C. arts. 2315.1, 2315.2, and 199. *Id.* (citing **SWAT 24 Shreveport Bossier, Inc.**, 00-1695 at 12, 808 So.2d at 302).

The law governing survival and wrongful death actions provides for “a distinct right of action, in favor of certain classes of persons.” See **Vaughan v. Dalton-Lard Lumber Co.**, 119 La. 61, 64, 43 So. 926, 927 (1907), *overruled on other grounds by King v. Cancienne*, 316 So. 2d 366 (La. 1975); **Levy v. State Through Charity Hospital of Louisiana**, 253 La. 73, 77, 216 So.2d 818, 819 (1968); see also **Watkins v. Exxon Mobil Corp.**, 13-1545 (La. 5/7/14), 145 So.3d 237, 240. “[T]he rights of action for wrongful death and survival actions are conferred only upon the persons the legislature has specifically included in the lists of eligible claimants” contained in the governing code article(s)—formerly La. C.C. art. 2315 (1870) and now La. C.C. arts. 2315.1 and 2315.2 (1986). **Rismiller**, 20-0313 at 9, \_\_\_ So.3d \_\_\_ (Weimer, J., dissenting). “Those not included [in the lists of eligible claimants] are excluded, and

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<sup>2</sup> The briefing by the litigants and the amicus in this matter has assisted this court’s analysis and has been thorough and well presented.

the article[(s)] cannot be construed to confer the right upon persons not expressly mentioned in it.” **Vaughan**, 119 La. at 64, 43 So. at 927.

Adoption was not incorporated into La. C.C. art. 2315 (1870) until 1932, when the list of eligible claimants was expanded to include “adopted children.” See Rismiller, 20-0313 at 5, \_\_\_ So.3d at \_\_\_ (Weimer, J., dissenting) (citing 1932 La. Acts 159, § 1). The legislature’s introduction of adopted children into the list of eligible claimants requires that the effects of adoption addressed in La. C.C. art. 199 be considered. See id., 20-0313 at 12, \_\_\_ So.3d at \_\_\_ (Weimer, J., dissenting). The term “adopted children” refers to children who have been added to a parental relationship—a relationship with the adoptive parents owing manifold duties to those children. *Id.*, 20-0313 at 6, \_\_\_ So.3d at \_\_\_ (Weimer, J., dissenting) (citing La. C.C. art. 199). Not until 1948 was the list of eligible claimants expanded to include “children given in adoption.” See id. (citing 1948 La. Acts 333, § 1). The term “children given in adoption” refers to the transfer of children out of one parental relationship into a different and new parental relationship. See id., 20-0313 at 17, \_\_\_ So.3d at \_\_\_ (Weimer, J., dissenting) (citing La. C.C. art. 199). Accordingly, after the 1948 amendment to La. C.C. art. 2315, the list of eligible claimants “included both ‘adopted children and children given in adoption.’” See id., 20-0313 at 6, \_\_\_ So.3d at \_\_\_ (Weimer, J., dissenting).

In the 1960 rewrite of La. C.C. art. 2315, the legislature defined “the words ‘child’, ‘brother’, ‘sister’, ‘father’, and ‘mother’” to “include a child, brother, sister, father and mother by adoption, respectively.” *Id.* (citing 1960 La. Acts 30, § 1 (emphasis added)). “[C]hildren ‘by adoption,’ a term like ‘adopted children,’ . . . refers to children who have been added to a parental relationship—a relationship with the adoptive parents owing manifold duties to those children.” *Id.* (citing La. C.C.

art. 199). Pursuant to the 1960 amendment, the list of eligible claimants no longer included “children given in adoption.” *Id.* (citing La. C.C. art. 199). As stated in the dissent to this court’s original opinion:

The legislature’s [1960] removal of “children given in adoption” from the lists of eligible claimants for wrongful death and survival actions is the clearest indicator of the legislature’s intent. The legislature’s [1948] authorization of “children given in adoption” as claimants existed for significant period of time ([until] 1960), which indicates both a realization of the reach of that language and an understanding of the consequences when the legislature chose to remove “children given in adoption” as eligible claimants. In the years following the removal of “children given in adoption,” the legislature has not expanded the lists of eligible claimants by returning “children given in adoption” to the lists presently found in La. C.C. arts. 2315.1 and 2315.2. It is not the role of this court to re-insert language into codal enactments the legislature expressly and specifically removed.

**Rismiller**, 20-0313 at 17-18, \_\_\_ So.3d at \_\_\_ (Weimer, J., dissenting). Because children given in adoption are currently not included in the lists of eligible claimants, they are excluded. See Vaughan, 119 La. at 64, 43 So. at 927.

In summary, as a result of their adoption, in which “the adopting parent becomes the parent of the child for all purposes” and the previous “filiation between the child and his legal parent is terminated” (La. C.C. art. 199), and the plain text of La. C.C. arts. 2315.1 an 2315.2, the plaintiffs have no right to assert a survival and wrongful death action in connection with the death of their biological father and half-siblings.<sup>3</sup> Any relevant legal relationship between the children given in adoption and the biological relatives whose deaths are the subject of these tort cases has been terminated. In our civil law system, this court simply cannot reinsert codal language related to children given in adoption that has been specifically removed by the legislature.

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<sup>3</sup> “It has long been held that children given up in adoption are divested of their legal rights except as to those relating to inheritance.” **Succession of Stewart v. Gordon**, 17-812, at 6 (La.App. 3 Cir. 10/3/18), \_\_\_ So.3d \_\_\_; see La. C.C. art. 199.

Furthermore, the evolution of the Louisiana Civil Code’s definition of “children” casts doubt on the majority’s finding, on original hearing, that interpreting “the term ‘children’ in La. C.C. arts. 2315.1 and 2315.2 to include biological children given in adoption is entirely consistent with the definition of children found in La. C.C. art. 3506.” See La. C.C. art. 3556(8) (1870), La. C.C. art. 3506(8) (2004); **Rismiller**, 20-0313 at 10, \_\_ So.3d at \_\_ (footnote omitted). Article 3556(8) (1870) provided:

Children. Under this name are comprehended, not only the children of the first degree, but the grandchildren, great-grandchildren, and all other descendants in the direct line.

Natural children, even though recognized, make no part of the children properly so called, unless they have been legitimated.

In that definition, no mention is made of children who had been adopted or children given in adoption. On the other hand, the *sui generis* law governing survival and wrongful death actions was amended to afford “adopted children” (in 1932) and “children given in adoption” (in 1948) the right to bring such an action. Had children who had been adopted or children given in adoption possessed the right to bring such an action by virtue of the definition of “children” in La. C.C. art. 3556(8) (1870), there would have been no need for the addition of those individuals to the list of eligible claimants in La. C.C. art. 2315 (1870).

The 1979 amendment to La. C.C. art. 3556(8)’s definition of “children” did not mention adopted children or children given in adoption.<sup>6</sup> The term “those adopted” was added to the definition of children in 1981, but still no mention was made of those “given in adoption.”<sup>7</sup> Article 3556(8) was renumbered as La. C.C. art. 3506(8)

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<sup>6</sup> See 1979 La. Acts 607, § 1.

<sup>7</sup> Pursuant to the 1981 amendment, La. C.C. art. 3556(8), in pertinent part, provided:

and then amended in 2004 to define “a child born of marriage,” which includes a child “adopted by [his parents]”; however, there is still no reference to those “given in adoption” in La. C.C. art. 3506(8).<sup>8</sup> Based on the evolution of the general definition of “children,” it is clear that children as defined by La. C.C. art. 3506(8) does not include “children given in adoption.”

### CONSTITUTIONAL ANALYSIS

Because this court found in its original opinion that the plaintiffs have a right of action under La. C.C. arts. 2315.1 and 2315.2, the plaintiffs’ constitutional challenge was pretermitted and “that part of the district court judgment declaring [these code articles and La. C.C. art. 199 to be] unconstitutional as applied to children given in adoption” was vacated. See Rismiller, 20-0313 at 11, \_\_\_ So.3d at \_\_\_. Having found on rehearing that the codal analysis of La. C.C. arts. 2315.1, 2315.2 and 199 forecloses a right of action to the plaintiff children, who were given in adoption, for the death of their biological parent and half-siblings, this court is called on to address the propriety of the district court’s declaration that La. C.C. arts.

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Children. Under this name are included those persons born of the marriage, **those adopted**, and those whose filiation to the parent has been established in the manner provided by law, as well as descendants of them in the direct line. [Emphasis added.]

See 1981 La. Acts 919, § 2.

<sup>8</sup> Currently, La. C.C. art. 3506(8) provides:

Children. Under this name are included those persons born of the marriage, those adopted, and those whose filiation to the parent has been established in the manner provided by law, as well as descendants of them in the direct line.

A child born of marriage is a child conceived or born during the marriage of his parents or **adopted by them**.

A child born outside of marriage is a child conceived and born outside of the marriage of his parents. [Emphasis added.]

See 2004 La. Acts 26, § 1.

2315.1, 2315.2, and 199 are “unconstitutional as applied to children given in adoption.” See *id.*, 20-0313 at 5, \_\_\_ So.3d at \_\_\_. In this endeavor, the court once again draws on and adopts the analysis in the dissenting opinion,<sup>9</sup> simply noting in summary that “[t]here is no perceived constitutional impediment to the legislature’s decision to not include ‘children given in adoption’ in the lists of eligible claimants.” *Id.*, 20-0313 at 18, \_\_\_ So.3d at \_\_\_ (Weimer, J., dissenting). A rational basis exists for limiting the categories of eligible claimants in La. C.C. arts. 2315.1 and 2315.2 to those who “are likely to be most affected by the death of the deceased.” See **Estate of Burch v. Hancock Holding Co.**, 09-1839, p. 9 (La.App. 1 Cir. 5/7/10), 39 So.3d 742, 749; **Allen v. Burrow**, 505 So.2d 880, 887-88 (La.App. 2 Cir. 1987). Children given in adoption “have moved into a new parental relationship, becoming children ‘by adoption,’ who are eligible claimants in the unfortunate occurrence of the tortious death of their adoptive parents.” **Rismiller**, 20-0313 at 18, \_\_\_ So.3d at \_\_\_ (Weimer, J., dissenting) (citing La. C.C. arts. 2315.1(D) and 2315.2(D)). “Likewise, the transfer of children into a new parental unit as children ‘by adoption’ terminates, for purposes of wrongful death and survival actions, any connection between the ‘children given in adoption’ and any biological siblings who were not ‘given in adoption.’” *Id.*

## CONCLUSION

For these reasons, the district court legally erred<sup>10</sup> in finding that the fact that Daniel Goins and David Watts were adopted does not prevent them from bringing survival and wrongful death claims for the deaths of their biological father and

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<sup>9</sup> See **Rismiller**, 20-0313 at 13-17, \_\_\_ So.3d at \_\_\_ (Weimer, J., dissenting).

<sup>10</sup> An exception of no right of action involving only a question of law is reviewed *de novo*. See **Rebel Distributors Corp., Inc. v. LUBA Workers’ Comp.**, 13-0749, p. 10 (La. 10/15/13), 144 So.3d 825, 833.

biological half-siblings and in overruling the defendant's exception raising the objection of no right of action.<sup>11</sup>

### **DECREE**

For these reasons, this court's original decree is vacated. Because the district court legally erred in declaring La. C.C. arts. 199, 2315.1(D), and 2315.2(D) unconstitutional as applied to children given in adoption, the district court's judgment is reversed. Judgment is hereby entered sustaining the defendant's peremptory exception raising the objection of no right of action, and dismissing the claims that are the subject of this exception.

**ORIGINAL DECREE VACATED; JUDGMENT OF THE DISTRICT COURT REVERSED; JUDGMENT RENDERED: PEREMPTORY EXCEPTION SUSTAINED and CLAIMS DISMISSED.**

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<sup>11</sup> **Rismiller**, 20-0313 at 3, \_\_ So.3d at \_\_ (citing **Succession of Stewart**, 17-812 at 2, \_\_ So.3d \_\_).

06/30/2021

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**VS.**

**GEMINI INSURANCE COMPANY, MARK ISIAH GORDON AND KEITH**

**BOONE TRUCKING, LLC**

**C/W**

**DAVID WATTS VS. MARK GORDON, KENNETH BOONE dba BOONE**

**TRUCKING, KEITH BOONE TRUCKING AND GEMINI INSURANCE**

**COMPANY**

**C/W**

**SHEILA SMITH VS. GEMINI INSURANCE COMPANY, KENNETH**

**CHAD BOONE D/B/A BOONE TRUCKING, AND MARK GORDON**

**C/W**

**SUCCESSION OF RICHARD STEWART, JR., RAYMOND KELLY,**

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**STEWART**

**VS.**

**MARK ISIAH GORDON, KENNETH BOONE, KEITH BOONE**

**TRUCKING, LLC AND GEMINI INSURANCE COMPANY**

*On Appeal from the 7th Judicial District Court, Parish of Concordia On Rehearing*

**Genovese, J.**, dissents for reasons assigned in the original opinion and for reasons assigned by Justice Griffin.

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**MARK ISIAH GORDON, KENNETH BOONE, KEITH BOONE  
TRUCKING, LLC AND GEMINI INSURANCE COMPANY**

*On Appeal from the 7th Judicial District Court, Parish of Concordia  
On Rehearing*

**GRIFFIN, J., dissents and assigns reasons.**

Because I would uphold this Court's opinion on original rehearing, I respectfully dissent.

In my view, the interpretative analysis starts and ends at the plain language of La. C.C. arts. 2315.1 and 2315.2. *See* La. C.C. arts. 9 and 11. While both Articles expressly expand the term "child or children of the deceased" to include children by adoption, there is no language excluding biological children of the deceased who

were given in adoption.<sup>1</sup> Further, the plain language of La. C.C. art. 199 forestalls the severance of the legal relationship between a child and their biological parent where “otherwise provided by law” – in this case, as provided by La. C.C. arts. 2315.1 and 2315.2.<sup>2</sup> The potential for a “double recovery” does not produce an absurd result as quantum will vary based on a child’s personal relationship and dependency on the deceased parent.<sup>3</sup> See *Stewart*, 17-0812, --- So.3d at ---, 2018 WL 4858748 at \*11 (Cooks, J., dissenting in part).

I also echo the concerns over constitutionality expressed by former Chief Justice Johnson in her concurrence on original hearing. Specifically, this Court has established that “the critical requirement for classification of a person as a child under Article 2315.2 is the biological relationship between the tort victim and the child.” *Jenkins v. Mangano Corp.*, 00-0790, p. 3 (La. 11/28/00), 774 So.2d 101, 103 (citing *Warren v. Richard*, 296 So.2d 813, 814 (La.1974)). Precluding recovery under La. C.C. arts. 2315.1 and 2315.2 could result in inequities where, as here, the record establishes that a familial relationship existed between the children and their

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<sup>1</sup> Notwithstanding the plain language of the Articles, I respectfully disagree with the majority’s interpretation of the effect of 1960 Acts, No. 30, § 1. As observed by Judge Savoie:

[T]he 1960 amendment ... did not eliminate the right of a child given in adoption to assert a claim arising out of his biological parent's death; rather, it simplified the pre-amendment phrase “the right of his action shall survive in case of death in favor of the children, including adopted children and children given in adoption, or spouse of the deceased, or either of them” by (1) replacing it with “child or children of the deceased,” which necessarily includes a biological child given in adoption, and (2) adding a paragraph that expands the term “child” to include a child that the deceased adopted.

*Stewart v. Gordon*, 17-0812 (La.App. 3 Cir. 10/3/18), --- So.3d ---, ---, 2018 WL 4858748 at \*19 (Savoie, J., dissenting in part) (citing Wex S. Malone, *Torts*, 21 La. L. Rev. 78, 81-82 (1960)).

<sup>2</sup> Support for this interpretation is found in Revision Comment (b) which begins with the phrase: “Among the exceptions to the severance of the legal relationship between the person adopted and his legal parents and relatives are ....” Thus, the Revision Comment anticipates other exceptions expressed within the positive law.

<sup>3</sup> The facts of this case do not present the scenario of an effective stranger realizing a windfall because their biological parent died. The record is clear that both Mr. Goins and Mr. Watts were not given for adoption by the Stewarts immediately after their births. Further, Mr. Goins was adopted by Mr. Stewart’s aunt and uncle and Mr. Watts was adopted by his maternal grandparents. The families all maintained relationships post-adoptions.

biological parents for a substantial time before the children were given in adoption and continued to endure post-adoption.