In the Missouri Court of Appeals
Eastern District

SOUTHERN DIVISION

IN THE MATTER OF LONNIE BROCKMIRE,	)	No. ED99103
Deceased.	)	Appeal from the Circuit Court of Cape Girardeau County
	)	Honorable Scott A. Lipke
	)	FILED: June 11, 2013

Appellant, Ronald W. Brockmire, appeals from the judgment of the probate division of the Circuit Court of Cape Girardeau County granting Sherri Renee Lewis Gikovate's and Joetta K. Giles' (collectively, "Respondents") Petition for Partial Distribution of Lonnie Lee Brockmire's estate. We reverse and remand.

I. BACKGROUND

The facts of this case are undisputed. Lonnie Lee Brockmire ("Decedent") died intestate on July 18, 2009. At death, Decedent had no surviving spouse and his parents predeceased him. Decedent, however, was survived by one biological brother, Ronald W. Brockmire ("Appellant"). Decedent had one biological daughter, Sherri Renee Lewis Gikovate ("Sherri"). At the time of Decedent's death, Sherri had one biological daughter ("Granddaughter"), born in November 2007.

Prior to Decedent's death, on January 9, 2008, Sherri, as an adult, was legally adopted by her stepfather.

On June 6, 2012, the personal representatives of Decedent's estate filed a Petition for Partial Distribution in the Circuit Court of Cape Girardeau, requesting that $25,000 from Decedent's estate be distributed to Granddaughter. Thereafter, on September 24, 2012, the probate court entered its Order finding Granddaughter to be an heir of Decedent and granted the request for partial distribution.

This appeal now follows.

II. DISCUSSION

The questions involved in this intestate distribution are both novel and interesting, having reference to the effect of the adoption laws of Missouri as controlled by the laws of inheritance, and the laws of inheritance as affected by the laws of adoption. While these legal issues may be novel to Missouri Courts, we note that the facts of this case are anything but novel in our evolving, modern American families.

Directly at issue in this case are: (1) whether the legal relationship between a biological grandparent and grandchild for purposes of intestate succession are severed by the adoption of the child of the grandparent (i.e., the grandchild's biological parent); and (2) whether the Missouri intestate and adoption statutes deprive a grandchild of a vested right—specifically a grandchild-grandparent lineal relationship—without due process. On appeal, Appellant argues that the adult adoption decree severed all legal relationships between Decedent and his biological child, Sherri; because Decedent was no longer Sherri's legal parent, Decedent was no longer legally the grandparent of Sherri's daughter (i.e., Granddaughter). Conversely, the probate court read, and the Respondents urge this

Court to also read these statutes to allow a descendant of an adopted person to inherit from his or her biological grandparent.

Standard of Review

The judgment of the probate court will be upheld on appeal, unless it is not supported by substantial evidence, is against the weight of the evidence, or erroneously declares or applies the law. Murphy v. Carron, 536 S.W.2d 30, 32 (Mo. banc 1976); see also Estate of Sullivan v. Sullivan, 366 S.W.3d 639, 642 (Mo. App. E.D. 2012). However, this case presents issues of statutory construction, a question of law, which this Court reviews *de novo*. In re Estate of Hayden, 258 S.W.3d 505, 508 (Mo. App. E.D. 2008).

Analysis

A. Effect of Adoption on Intestate Succession

In Missouri, both the right of inheritance and the subject of adoption with the rights and obligations springing therefrom are purely creatures of statutes. See Coon ex rel. Coon v. Am. Compressed Steel, 133 S.W.3d 75, 80 (Mo. App. W.D. 2004) ("Adoption is purely a creature of statute."); see also Morris v. Ulbright, 558 S.W.2d 660, 663 (Mo. banc 1977) ("It has long been recognized in this state that the law of inheritance is a creature of statute."); In re Cupples' Estate, 199 S.W. 556, 557 (Mo. 1917) ("the right of the Legislature to prescribe the right of descent and inheritance cannot be doubted").

First, with respect to intestate succession, Section 474.010, RSMo,[1] delineates the course of descent in cascading categories of priority depending on the existence of a surviving spouse, children of the decedent or their descendants, any surviving parents,

[1] All statutory references are to RSMo 2000, unless otherwise indicated.

and the decedent's siblings and their descendants, et cetera.[2] See Section 474.010. The relevant portions of Section 474.010 read as follows:

> All property as to which any decedent dies intestate shall descend and be distributed, subject to the payment of claims, as follows:
>
> (1) The surviving spouse shall receive:
> (a) The entire intestate estate if there is no surviving issue of the decedent;
> (b) The first twenty thousand dollars in value of the intestate estate, plus one-half of the balance of the intestate estate, if there are surviving issue, all of whom are also issue of the surviving spouse;
> (c) One-half of the intestate estate if there are surviving issue, one or more of whom are not issue of the surviving spouse;
>
> (2) The part not distributable to the surviving spouse, or the entire intestate property, if there is no surviving spouse, shall descend and be distributed as follows:
> (a) To the decedent's children, or their descendants, in equal parts;

See Section 474.010.

Since Decedent died without a surviving spouse, we proceed directly to subsection 2 of Section 474.010. Specifically in contention in this case is whether Decedent, at his death, had children or whether those children had descendants as prescribed by Section 474.010(2)(a). Section 474.060 defines a child for purposes of Section 474.010(2):

> If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person, *an adopted person is the child of an adopting parent and not of the natural parents*, except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and such natural parent.

See Section 474.060.1 (emphasis added). Accordingly, it is indisputable and uncontested, that Sherri is unable to inherit from Decedent, her natural father, because

[2] Those individuals who are entitled under the statutes of intestate succession to inherit are defined as "heirs." See Section 472.010(14).

she is not legally Decedent's child. See e.g., Wailes v. Curators of Cent. Coll., 254 S.W.2d 645, 647-49 (Mo. banc 1953) (first Missouri case establishing that an adopted child many not inherit from or through its natural parents). As Decedent had no legal child at the time of his death, there can be no "descendant" in the absence of a child. See Section 474.010(2)(a); see also e.g., In re Estate of Brittin, 664 N.E.2d 687, 691 (Ill. App. 1996) ("As with natural children, the children of the adoptee, by virtue of the adoption, become the grandchildren of the adopting parent, thereby creating a grandparent-grandchild relationship.").

Furthermore, no parent-child relationship can be established. See 474.060.1. Granddaughter seeks to inherit from Decedent's estate based upon the course of descent under Section 474.010. To inherit as descendants of Decedent's child, Granddaughter must first establish that Sherri was Decedent's daughter for purposes of the statutory scheme. See Section 474.010(2)(a). Granddaughter cannot do so, because applying the unambiguous language of Section 474.060.1, Sherri became the child of her adopting parent and no longer was the child of Decedent, Sherri's biological father. Consequently, Decedent and Sherri, while biologically father and daughter, were not legally father and daughter for purposes of intestate succession under Section 474.010. Therefore, Granddaughter is not legally the granddaughter of Decedent and may not inherit from him.

This Court finds support for its holding in Williams v. Rollins, 195 S.W. 1009 (Mo. 1917). In Williams, the adopted child ("Adoptee") predeceased her adopting father ("Adopting Father"). Id. at 1009-10. Adoptee left five surviving biological children. Id. at 1009. These five children survived the Adoptee's Adopting Father. Id. at 1010. Prior

to his death, Adopting Father executed his last will and testament, bequeathing all his personal property to his wife and bequeathing a life estate in all his real estate to his wife, with remainder to Adopting Father's sister's children ("Nieces and Nephews"). Id. However, Adopting Father's wife also predeceased him. Id. The Williams court held that because Adopting Father's wife predeceased him and there was no residuary clause in his will, Adopting Father's personal property descended to the children of Adoptee as "descendants" of Adoptee. Id. That court stated that in the first clause of the intestate succession statutes, providing for distribution, "first to his children, or their descendants," the word "children" included adopted children and the word "descendants" included the children of the adopted child. Id.

Respondents argue that there is an inconsistency, or conflict, within the statute. Specifically, Respondents argue that the use of the words "surviving issue" in Section 474.010(1) requires a different interpretation, and thus, a different result. See Boatmen's Trust Co. v. Conklin, 888 S.W.2d 347, 354 (Mo. App. E.D. 1994) ("we note that our [Missouri] Supreme court declared long ago the words 'children,' 'issue,' and 'heirs' are not synonymous terms"); see also Kindred v. Anderson, 209 S.W.2d 912, 918 (Mo. 1948) (prima facie, the term 'child' "means lineal descendants of the first degree—one's own children"). "Issue" of person is defined as:

> persons who take by intestate succession, includes adopted children and all *lawful* lineal descendants, except those who are the lineal descendants of living lineal descendants of the intestate;

See Section 472.010(16) (emphasis added); see also Kindred, 209 S.W.2d at 918 ("for purpose of inheritance, the word 'issue' generally has more broadly included lineal descendants of any degree"). Because Granddaughter is, biologically, a lineal descendant of Decedent, Respondents argue that she should be able to inherit.

Assuming, *arguendo*, there is an inconsistency within Section 474.010, as Respondents propose, we, nevertheless, find that this appeal can be disposed of by determining whether Granddaughter is a "lawful" lineal descendant of Decedent. See Section 472.010(16). In so determining, this Court must consider whether the legislature, in enacting the adoption statutes, intended to limit the intestate succession rights of an adoptee's child.

The statutory authority for any adoption—minor or adult—in Missouri is governed by Chapter 453. Am. Compressed Steel, 133 S.W.3d at 80; see also Gamache v. Doering, 189 S.W.2d 999, 1001 (Mo. 1945) ("One may, by complying with the statutory adoption law . . . adopt an adult."). Thus, regardless of whether there be an adoption of a minor or an adoption of an adult, the consequences of said adoption have been prescribed by statute:

> 1. When a child is adopted in accordance with the provisions of this chapter, all legal relationships and all rights and duties between such child and his natural parents (other than a natural parent who joins in the petition for adoption as provided in section 453.010) shall cease and determine. Such child shall thereafter be deemed and held to be for every purpose the child of his parent or parents by adoption, as fully as though born to him or them in lawful wedlock.
>
> 2. Such child shall be capable of inheriting from, and as the child of, his parent or parents by adoption as fully as though born to him or them in lawful wedlock and, if a minor, shall be entitled to proper support, nurture and care from his parent or parents by adoption.
>
> 3. The parent or parents by adoption shall be capable of inheriting from and as the parent or parents of their adopted child as fully as though such child had been born to him or them in lawful wedlock, and, if such child is a minor, shall be entitled to the services, wages, control and custody of such adopted child.
>
> 4. The adopted child shall be capable of inheriting from and taking through his parent or parents by adoption property limited expressly to heirs of the body of such parent or parents by adoption.

> 5. The word **"child"** as used in this section, shall, unless the context hereof otherwise requires, be construed to mean either a person under or over the age of eighteen years.

See Section 453.090.

Missouri follows the "substitution approach" to adoptions: "a child adopted under Missouri's adoption statutes is taken out of the blood stream of its natural parents and placed, by operation of law, into the blood stream of its adoptive parents." Commerce Bank, N.A. v. Blasdel, 141 S.W.3d 434, 445 (Mo. App. W.D. 2004) (en banc). In fact, the Missouri Supreme Court has held that an adopted individual's relations with his or her natural parents cease, and by law the adopted individual "becomes the child of its adopting parents for *every purpose* as fully as though born to the adopting parents in lawful wedlock." St. Louis Union Trust Co. v. Hill, 76 S.W.2d 685, 689 (Mo. banc 1934) (emphasis added); see also Section 453.090.1. Therefore, an adopted individual becomes a lineal descendant of his or her adopting parents, and for the purposes of inheritance, the adopted individual "becomes the child and heir, with all the incidents of those relations, including the incident of transmission of the inheritance by his death, *and the children of the adopted one would stand in the same line of descent as their parent*." In re Cupples' Estate, 199 S.W. at 558 (emphasis added). Accordingly, the rights to an inheritance of an adopted person extends to the heirs of an adopted person, and such heirs shall be the same as if such adopted person were the genetic child of the adopting parent. See e.g., Bernero v. Goodwin, 184 S.W. 74, 75 (Mo. 1916) ("If an adopted child dies during the life of its adopting parent, leaving children, such children are for most, if not for all, purposes, regarded as natural grandchildren of the adopting parent, and are entitled to

represent their parent and to receive from the estate of his adopting parent what he would have been entitled to receive had he lived until after such parent's death.")

Therefore, although Granddaughter remains a biological descendant of Decedent, she no longer remains a "lawful" lineal descendant, or issue, of Decedent. Thus, Granddaughter may not inherit from Decedent since Granddaughter is now considered a lawful lineal descendant of Sherri's adopting father.

Furthermore, because the legislature has not prescribed statutes differentiating between minor and adult adoptions,[3] we need not determine if there is a distinction between an adoptee's status as an adult or a minor at the time of adoption because all adoptions, in the State of Missouri, follow that same procedure and effectuate the same consequences as so prescribed by Chapter 453.

Respondents take great effort in attempting to persuade this Court of the "absurdity" of this result and the fact that our Missouri Legislature "certainly" did not imagine this rare factual scenario. In fact, Respondent goes so far as to argue that this result is inconsistent with the legislative intent. However, "[t]his Court's primary rule of statutory interpretation is to give effect to the legislative intent *as reflected in the plain language of the statute at issue*." Parktown Imp., Inc. v. Audi of Am., Inc., 278 S.W.3d 670, 672 (Mo. banc 2009) (emphasis added). The plain and unambiguous language of the statutes heretofore analyzed terminated Granddaughter's right of inheritance from Decedent, supra. This Court need not look at the "general purpose of intestacy statues," or compare and contrast grandparent-visitation statutes and cases, or endeavor to

[3] This Court notes that numerous states have distinguished, by statute, the procedure and consequences of adoptions of an adult as compared with adoptions of a minor. See e.g., Alaska Stat. § 25.23.040(b); Cal. Fam. Code § 9300, *et seq.*; Col. Rev. Stat. § 14-1-101; Conn. Gen. Stat. §45(a)-734; Okla. Stat. tit. 10, § 7507-1.1; Utah Code § 78B-6-115. Even the United States Uniform Law Commission's Uniform Adoption Act sets forth a model statute for an adoption of an adult. See Unif. Adoption Act § 5-101 (1994).

ascertain the Missouri Legislature's deliberations, as Respondents suggest, but, rather, we need only look at the plain language of the intestacy and adoption statutes. To find that the legislature did not intend the result reached would be contrary to the plain language of the statues.

We acknowledge and recognize the important and special relationship grandparents can form with their grandchildren. However, this Court's duty is to construe and apply the laws as written by the legislature, and any argument as to the alleged unfairness of construction of a statute as written should be addressed to the legislative and executive branches of government. Kavanagh v. Dyer O'Hare Hauling Co., 189 S.W.2d 157, 160 (Mo. App. 1945). Furthermore, we note than an individual may avoid the intestate statutes and may determine, during their life, the individual or individuals they wish their estate to descend to by creating such legal instruments as wills and trusts.

This Court, therefore, holds that Granddaughter is not an heir of Decedent under the statutes of intestate succession, and, thus, cannot inherit.

B. No Vested Right in a Bloodline

Respondents argue that if we find Granddaughter ineligible to inherit from Decedent, Granddaughter would be deprived of her "vested right" of having a legal relationship of being a lawful lineal descendant of Decedent. Respondents do not argue that Granddaughter has a vested right to inherit, but, rather, Granddaughter did have a vested right to a legal relationship with Decedent that was eviscerated, without due process (because Granddaughter was not a party to, nor were her interests adequately represented), at the time of Sherri's adoption. Ostensibly, Respondents are requesting

that this Court find that an individual has a vested right to a "legal bloodline" at the time of birth. Respondents cite no law for their proposition.

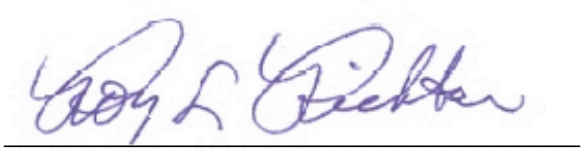
A "vested right" is not defined by our Federal or State constitutions. Our Missouri Supreme Court, however, has defined a "vested right" as "a title, legal or equitable, to the present or future enjoyment of property or to the present or future enjoyment of the demand, or a legal exemption from a demand made by another." Fisher v. Reorganized Sch. Dist. No. R-V of Grundy Cnty., 567 S.W.2d 647, 649 (Mo. banc 1978). A vested right "must be something more than a mere expectation based upon an anticipated continuance of the existing law." Id. (quoting People ex rel. Eitel v. Lindheimer, 21 N.E.2d 318, 321 (Ill. 1939)).

We find Respondents' contention without merit. Certainly, it cannot be said that this Court has genetically removed Granddaughter from Decedent's bloodline. To the contrary, Granddaughter will always be a genetic offspring of Decedent and the law can do nothing to change that. However, an individual cannot be said to have a vested right to remain "lawfully" or "legally" within a certain bloodline for purposes of intestate succession. In fact, our own Missouri adoption statutes demonstrate that an individual's bloodline, for legal purposes, may be substituted. See e.g., Commerce Bank, N.A., supra. For example, if Granddaughter were to be adopted by an adopting mother later in life, Granddaughter would no longer have any legal right to inherit from Sherri even though Granddaughter is the genetic offspring of Sherri. In America, the right to familial association is not absolute and may be regulated, for even a natural parent has no absolute right to the custody of a child as demonstrated by our adoption statutes and termination of parental rights statutes. See Section 453.090; Section 211.447.

Granddaughter is not Decedent's heir-at-law and cannot inherit from Decedent's estate through intestate succession.

III. CONCLUSION

The judgment of the probate court sustaining Respondents' Petition for Partial Distribution of Lonnie Brockmire's estate is reversed and the cause remanded to declare Ronald W. Brockmire Decedent's sole legal heir.



Roy L. Richter, Judge

Robert M. Clayton III, P.J., concurs
Robert G. Dowd, Jr., J., concurs