IN THE SUPREME COURT OF MISSOURI

Case No. SC93606

In the matter of Lonnie Brockmire, Deceased

Ronald W. Brockmire, Appellant

v.

Sherri R. Gikovate, Joetta K. Giles & Bella L. Gikovate, Respondents

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Appeal from the Circuit Court of Cape Girardeau County, Missouri
Thirty-Second Judicial Circuit, Probate Division
Hon. Scott A. Lipke

APPELLANT'S SUBSTITUTE REPLY BRIEF

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REPLY ARGUMENT

I. The Probate Court Improperly Applied RSMo §§ 474.060 and 453.090 in Determining Intestate Succession

In their Substitute Brief, Respondents urge this Court to disregard the language in Missouri's intestate succession statute, RSMo § 474.010 (2000), and judicially revise the law to install natural grandchildren as heirs. Indeed, Respondents' position would be more palatable if § 474.010 even mentioned the word "grandchild." The statute, instead, permits "children, or their descendants" to inherit from an intestate decedent.

Bella Lewis Gikovate ("Bella") can only inherit as a descendant of Lonnie Brockmire's child, her mother, Sherri Renee Lewis Gikovate ("Sherri"). Bella would only be entitled to inherit *through* Sherri. By operation of RSMo § 474.060 (2000), Sherri is no longer Lonnie's child and therefore, Bella cannot inherit through her as a descendant of Lonnie's child. The effect of § 474.060 is not to make it as if Sherri predeceased Lonnie, it is to make it as if Sherri had never been born of Lonnie in the first place.

Respondents argue that an adoption should only affect the intestate succession rights of the adoptee and not those further down the family tree. Under the intestate succession statute as written, however, it would make no difference. Even if Bella were to remain in the legal bloodline as a granddaughter of Lonnie, she is still not entitled to inherit from his estate. By statute, a grandchild inherits from a grandparent only *through* his or her parents. Unless the grandchild is a descendant of a child of the decedent, RSMo § 474.010 gives a grandchild nothing.

Respondent's Brief is laden with hypothetical situations demonstrating how it might be awkward for an adult to be adopted by another adult thereby altering the family structure. Appellant does not deny that an adult adoption can have unintended legal consequences. It is the responsibility of the adoptee and adoptive parent to carefully consider their options and seek legal advice before bringing such a serious legal proceeding. The most significant of these unintended consequences can be avoided by preparing and executing a last will and testament. A competent person is free to make a will to direct the disposition of his or her real and personal property. RSMo § 474.310 (2000). The intestate succession statute is only a default.

Under Missouri law, legal relationships are creatures of statute and are subject to modification by the Courts. By following the law, a couple can become husband and wife. *See* RSMo § 451.010 *et seq.* (2000). They can also get divorced. *See* RSMo § 452.240 *et seq.* (West Supp. 2013). A parent-child relationship springs into existence upon birth. It can be terminated involuntarily by a court upon petition by the circuit juvenile officer. *See* RSMo § 211.447 *et seq.* (West Supp. 2013). While these legal relationships may be altered by judicial process, the law cannot decide who a child calls "grandpa," any more than it can decide where that child attends Thanksgiving dinner.

While a court can alter legal relationships, the issue of family harmony is a matter that the courts cannot affect. The notion that a family unit only includes "legal" family members is outdated. A modern blended family might include unmarried parents with children from prior relationships. The law affords these families the flexibility to define their living arrangements through contract and direct the disposition of their property

through a duly executed will. The new "right" to remain in a legal bloodline proposed by Respondents is of little practical significance.

Respondents' complaints regarding potentially untoward consequences of the current adoption and intestate succession statutes should be directed to the Missouri General Assembly, not this Court.

II. A Person Has no Vested Right to their Bloodline at Birth

Respondents cite the existence of grandparent visitation under Missouri law as proof that the General Assembly recognizes the relationship of grandparent-grandchild apart from the relationship of being a child's child. *See* RSMo § 452.402 (West Supp. 2013). The existence of this statutory right actually cuts against Respondents' position, as it demonstrates that the legislature knows how to establish a legal relationship between grandparent and grandchild when it intends to do so. If the legislature had intended to create a direct right of inheritance between grandparents and their grandchildren, it would have used the same clear language in § 474.010 to effect its wishes.

Respondents concede that "no law or case specifically prescribes a vested right to one's family bloodline" (Resp't Br. 21). Therefore, no such right exists. This Court has before opined that "the right of the Legislature to prescribe the right of descent and inheritance cannot be doubted. It is not a natural right." *In re Cupples' Estate*, 199 S.W. 556, 557 (Mo. 1917) (internal citations omitted).

Moreover, the expectation of a continued legal relationship is not included in the rights protected by the due process clause of the Missouri Constitution. The Missouri

Constitution protects citizens against deprivations of "life, liberty or property" without due process of law. Mo. Const. Art. I, § 10. Respondents cite no cases or statutes which place their proposed "right" to remain in a legal bloodline into any of these three categories. Therefore, in the absence of any such authority, due process concerns were not implicated in the proceeding by which Sherri was adopted by her stepfather.

III. The Intestate Succession law is not "Retrospective in its Operation"

The Missouri Constitution prohibits the General Assembly from enacting a law "retrospective in its operation." Mo. Const. Art. I § 13. Respondents argue that RSMo §§ 474.010 and 474.060 would operate retrospectively if this Court rules that Sherri's adoption terminated Bella's legal relationship with Lonnie. This position is flawed because legislative history indicates that both statutes were enacted long before the genesis of this case.

In fact, the last amendment to RSMo § 474.010 appears to have been enacted through Senate Bill 494 in 1996. The last amendment to RSMo § 474.060 happened even longer ago, through Senate Bill 637, during the 1980 session. Since long before Bella's birth in 2007, Missouri's law on adoption and intestate succession has been unchanged. In substance, Respondents' discussion of this issue in their brief seems to focus on due process considerations, which are addressed above. This case does not involve a law which operates retrospectively.

IV. The *Estate of Davis* Case is Inapposite

As Respondents concede, the *In re Estate of Davis* case interpreted a different statute. 169 Cal. App. 3d 471 (Cal. App. 3d Dist. 1985) Therefore, its usefulness in construing a Missouri statute is extremely limited. The case only holds that children of an adopted child remain "issue" of their natural grandfather. No indication is given as to how "issue" was defined, or if it was defined, under California law.

Under Missouri law, § 474.010 does not authorize a distribution to "issue" under any circumstances. As previously noted, it makes a distribution to "decedent's children, or their descendants." RSMo § 474.010. Additionally, the term "issue" is defined by Missouri statute to include "adopted children and all *lawful* lineal descendants, except those who are the lineal descendants of living lineal descendants of the intestate." RSMo § 472.010 (2000) (emphasis added). Because of these differences in statute, this Court should give very little weight to the opinion of the California Court of Appeal.

V. Conclusion

The Court's task in this case is to apply the plain language of the intestate succession statute, RSMo § 474.010, to the uncontested facts. This task can be reduced to a simple question: on the date of Lonnie Brockmire's death, was Sherri Renee Lewis Gikovate his lawful child? If this Court finds that RSMo § 474.060 severed the parent-child relationship between Lonnie and Sherri, it must reverse the Probate Court's ruling and find Ronald Brockmire to be Lonnie's sole heir.

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CERTIFICATE OF COMPLIANCE AND SERVICE

The undersigned hereby states and certifies:

(1) That this brief complies with the limitations contained in Missouri Supreme Court Rule 84.06 and contains 1,449 words, excluding the cover and this certification as determined by Microsoft Word 2010;

(2) That a copy of this brief has been served upon all counsel of record through the Court's electronic filing notification system.

on this 21st day of November, 2013.

BRADSHAW, STEELE, COCHRANE & BERENS, L.C.

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