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

RESPONDENTS' SUBSTITUTE BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE(S)**

STATUTES

CONSTITUTIONAL PROVISIONS

STATEMENT OF FACTS

Appellant's Statement of Facts is accurate, though incomplete. It should be noted that Respondent Bella Lewis Gikovate, the grandchild and alleged heir of the intestate decedent, was born on November 14, 2007 and was already in existence at the time her mother, the biological daughter of the intestate decedent, Sherri Renee Lewis Gikovate, was adopted on January 9, 2008. (LF9)

ARGUMENT

The instant case presents novel issues of first impression for this Court. The first issue, which has much further reaching implications, is what effect the adoption of a person with existing lineal descendants has on the legal relationships between extended family members of the adoptee and the existing descendants (e.g. between grandparents and grandchildren). The second issue, which is more determinative of the instant case, requires an interpretation of the Missouri intestacy statute, RSMo §474.010, and whether there is a conflict between the multiple distribution provisions that creates an ambiguity. For the purpose of following Appellant's order of argument, the second issue will be addressed first in this brief.

Appellant's Point I

That the probate court erred in declaring Bella Lewis Gikovate an heir of Decedent

"Overview": Distribution Language of RSMo §474.010(2)(a)

Appellant's primary argument for declaring himself the sole heir of the decedent Lonnie Brockmire's estate rests in a strict literal reading of a fraction of the statute governing rules of descent in intestate estates; to wit, RSMo §474.010(2)(a). Contained within that snippet of RSMo §474.010 is the first priority of distribution for property not inherited by a spouse. Specifically, the first priority provides distribution to a decedent's "children, or their descendants, in equal parts." Appellant seizes upon this line as the sole

basis for excluding the Decedent's natural granddaughter - who was born prior to her mother's adoption - from inheriting as an intestate heir to the Decedent's estate. This reliance is flawed for several reasons, including that it creates an internal conflict or ambiguity from the plain language of the statute taken as a whole, it conflicts with the general legislative intent of the statute, and it conflicts with the general purpose of intestacy laws.

To address the first point, Appellant's strict literal reading of RSMo §474.010(2)(a) gives credit to only the words contained in that specific provision, while turning a blind eye to the remaining rules of descent contained in RSMo §474.010 as a whole. In particular, before lineal descendants of decedents are afforded their share of an intestate estate, the statute provides distribution to a decedent's spouse. In RSMo §474.010(1), the statute discusses what portion of an estate is awarded to a spouse. Importantly, it reads that the surviving spouse receives all of the property, if "there is no surviving issue of the decedent." RSMo §474.010(1)(a) (emphasis added). In RSMo §472.010(16), "issue" is defined to include "all lawful lineal descendants," which should include a living biological granddaughter; even if her intermediate parent had later been adopted. The statute further uses "surviving issue" as the limiting factor for other spousal distribution scenarios under RSMo §474.010(1)(b) and RSMo §474.010(1)(c). This limiting language of "surviving issue" therefore creates a portion of an intestate estate that is set aside for none other than "surviving issue." This becomes very important when

reading the statute as a whole, as the language is inconsistent with RSMo §474.010(2)(a), which distributes the share set aside for "surviving issue" to the decedent's "children, or their descendants." This conflict must be resolved by considering the statute as a whole, and not relying only upon the language of RSMo §474.010(2)(a) as Appellant seeks to do. "In determining the legislature's intent, the provisions of the entire act must be construed together, and if reasonably possible, all the provisions must be harmonized." *State ex rel. Casey's Gen. Stores, Inc. v. City of W. Plains*, 9 S.W.3d 712, 716-717 (Mo. Ct. App. 1999).

This statutory conflict in language is more easily demonstrated with the following simplified analysis. RSMo §472.010 defines "Issue" to include "all lawful lineal descendants." Lawful lineal descendants could be divided into three categories: A) Children B) Lineal Descendants who are NOT Descendants of Children (i.e. Respondent Bella Gikovate, the biological granddaughter) and C) Descendants of Children. Thus, "surviving issue," as used in RSMo §474.010 includes survivors from categories A, B, or C. In §474.010(1) the statute makes an analysis of whether there are surviving issue (A, B or C) and if so, it specifically creates a portion of the estate to go to them. The portion is contingent on if there is a surviving spouse, but is set aside for "surviving issue" nonetheless. However, in §474.010(2), the portion that has been set aside for the surviving issue is distributed to "the decedent's children, or their descendants" which only includes components A and C of surviving issue. Within the two sections of the

statute it creates an inheritance for "issue" (ABC) but distributes to "children, or their descendants" (AC).

Looking at the two parts of §474.010 together, it creates a void in the statute by setting aside property for "issue" but only distributing it to "children, or their descendants." That is, if there was an intestate estate situation where there was a spouse as well as surviving issue, but not a child (as is the situation here, save for the spouse), the statute would set aside a portion for that surviving issue, but then never distribute it if a distribution can only go to a child, or descendants of a child. Such a problematic implementation of the statute is the interpretation Appellant seeks to enforce. Further, such a scenario would ultimately descend a portion of the estate to collateral heirs rather than the surviving spouse only, which directly conflicts with the plain language and intent of the statute.

Legislative Intent

Indeed, had the legislature intended that the very limited categorical exception between "issue" and "children, or their descendants" presented by the instant case be excluded from inheriting, they could have used consistent language and stated in RSMo §474.010(1) that the surviving spouse receives their share of the estate contingent upon whether there are "surviving children, or their descendants," rather than "surviving issue" as the legislature did use.

While it could also be said that the legislature could have used “surviving issue” in RSMo §474.010(2)(a), it makes much more sense that the legislature opted to use the term "children, or their descendants" in that provision as a stylistic preference to make clear that the first generation of issue was entitled to inherit prior to any later generation.

When RSMo §474.010 is considered as a whole it becomes quite clear that the intestate laws create an estate portion for a decedent's issue, rather than simply their children, or the children's descendants. If it seems that the difference between the two would be exceptionally rare, it certainly is. Unfortunately, that difference is the very situation we have here, where the Decedent had a child and a grandchild, but the child was then later adopted, removing herself from the Decedent's blood line. However, the statutory quirk should not serve to remove the pre-existing grandchild from the intestate blood line. The internal inconsistency and ambiguity of RSMo §474.010 should be resolved by determining the intent of the statute.

The written opinion of the Court of Appeals of the Eastern District of Missouri did not fully address the argument as to whether or not there was an ambiguity or conflict in the statute. Rather, the Court of Appeals relied upon their finding that since Respondent Bella had her family replaced with the new family of her mother after the mother’s adoption, she was no longer a “lawful lineal descendant” pursuant to the definition of “issue” contained in §472.010. *In re Brockmire*, ED99103, 2013 WL 2484534 at 4-5 (Mo. Ct. App. June 11, 2013). Given this, there was no analysis of the conflict within the

intestacy statute if it is found that Bella remains a lawful lineal descendant, and therefore "issue," of the decedent.

With all factors considered, it would be ridiculous to find that the legislature intended to exclude a person like Respondent Bella Gikovate, an innocent child who was in existence but unrepresented during her mother's adoption, from inheriting. The legislature almost certainly never imagined such a rare factual situation as this when writing the intestacy statute, and definitely did not make a change in a statute based upon this one in a million scenario. The intent of distributing the "surviving issue" share to "children, or their descendants" is just a stylistic change to make it clear that a decedent's children take first before later generations. It makes it clear that the descent does not have some pro-rata apportionment among the generations. It is much more understandable and graceful to describe the descent among surviving issue as going to "children, or their descendants" than it would be to describe it along the lines of being distributed to "surviving issue, with priority to the first generational level."

Additionally, the legislative intent can clearly be found to provide for lineal descendants, i.e. granddaughter Respondent, before collateral heirs, i.e. brother Appellant. Looking at §474.010, all property goes to a surviving spouse unless there is surviving issue. There is no similar intrusion on the surviving spouse for collateral heirs. Thus, while a granddaughter can inherit when there is a surviving spouse, a brother could not. Clearly, the legislature would intend for Respondent to inherit over Appellant.

Appellant's argument asserts that the determination of this case should be limited to §474.010(2) and the consideration of whether the Decedent died with children, and if the children, or their descendants, survived him. However, this narrow question ignores the clear ambiguity within the remainder of the intestacy statute. The constructional interpretation of the statute's ambiguity requires that legislative intent and rationality be factored in, which dictate that the relevant question should be whether, at his death, the Decedent had any surviving issue. Appellant seeks to slink past his great-niece to the sole heir position by applying a strict literal construction to a single provision of the statute without giving any thought to the legislative purpose and while ignoring the remaining 95% of the statute. "In interpreting statutes, the fundamental objective is to ascertain the intent of the legislature from the language of the statute and, if possible, give effect to that intent." *State ex rel. Casey's Gen. Stores, Inc.*, 9 S.W.3d at 717. Equity and statutory purpose require a reading of RSMo §474.010 which encompasses the whole of its provisions and the spirit of its intent. Appellant's strict literal reading of a single provision of the statute leaves Bella in probate limbo as issue of the Decedent, but not a descendant of a child, causing her to receive nothing from her own grandfather. A more proper and just result would be reached by treating Bella's mother, Sherri R. Gikovate as having pre-deceased the Decedent for this extremely limited scenario and leaving Bella in place as an heir. It should be found that Bella, the grandchild of the Decedent, is an heir and that Sherri's adoption did not remove Bella from the Decedent's biological line.

General Purpose of Intestacy Statutes

In addition to the statutory purpose of RSMo §474.010, Appellant's argument would frustrate the general purpose of intestacy statutes. The general design of intestacy statutes is to provide as close a distribution of property as the normal decedent would desire. As a typical grandparent will tell you, they love their grandchildren because they are their grandchildren, not because they are the descendants of their children. The purpose of intestacy, and the purpose of RSMo §474.010, is to distribute property in the manner a typical decedent would wish it to be distributed. A decedent would not normally wish for a grandchild to be disinherited because of an action their parent took without any involvement of the grandchild.

Double Inheritance

Appellant points out that if Bella is allowed to inherit as an heir of her natural grandfather, she would be allowed dual standing to inherit from her natural grandfather and also being able to inherit from her mother's adoptive father. While this is correct, it is not problematic. Allowing a person in Bella's position to inherit through two grandparent blood lines is preferable to Appellant's alternative of punishing her by removing her intestacy rights to her natural grandfather due to her mother's adoption. Bella had no involvement or representation in her mother's adoption and should not lose

anything because of it, even if it does result in her receiving an additional inheritance line.

Missouri courts have previously addressed and approved of double inheritances. In *Gardner v. Hancock*, 924 S.W.2d 857 (Mo. Ct. App. 1996), the court considered a situation where an heir had been equitably adopted by a non-biological parent and had previously inherited from the equitable adoption relation. The heir's biological family had a member pass away, which the same heir would naturally stand in line to inherit from. The court found that despite the equitable adoption, the legal relationship and intestacy line between the heir and the decedent remained intact. The court further noted that the person was still also able to inherit from the equitably adoptive parents. Thus, the heir retained his right to inherit from biological family despite being equitably adopted, as the heir's right to inherit was never extinguished by judicial process of adoption. The case upholds the notions that double inheritances are acceptable under the law, that inheritance rights must be extinguished while the person is represented during legal process, and that the preferable and more just result is for an innocent heir to receive an extra benefit rather than have one taken without due process.

"Bella had no vested right to her legal relationship with Lonnie."

Appellant's argument regarding whether or not Bella is entitled to maintain her legal relationship with the decedent is better addressed in conjunction with other due

process and retrospective effect arguments addressed *infra* under the heading "Bella had a vested right to her legal bloodline…" contained in Respondents' Additional Argument B. However, Respondents would like to point out, *arguendo*, that even if there is no vested right to a grandchild's legal relationship to their grandparent, the adoption statutes contained in RSMo §474.060 and 453.090 make no statement that would sever the relationship between an adoptee's existing descendants and the existing descendants' extended family through the adoptee. That is, the adoption statutes do not dictate that the relationship between Bella and the Decedent was severed; regardless of whether the relationship is construed as a vested right or not. This idea is also discussed much further *infra* under the heading "The Plain Language of RSMo §453.090 and §474.060 Does Not Make Any Change to the Family Bloodline of the Adoptee's Existing Descendants" contained in Respondents' Additional Argument A.

"The term 'issue' is irrelevant in the case at bar"

The argument presented by Appellant in the above titled section of his first point relied on has largely been addressed in previous argument by Respondents which need not be repeated here. That said, it is important to note that Appellant's primary argumentation in this section seems to assert that other portions of the statute governing intestate descent should be wholly ignored since they are not applicable to the facts at bar. This conflicts with the general principles of statutory construction which demand

that the statute be considered as a whole and tested for internal consistency, rather than seizing upon a single line of the statute to the exclusion of all other parts. This Court has made it clear that when determining the meaning or intent of statutory language, "words must be considered in context and sections of the statutes in pari materia, as well as cognate sections, must be considered in order to arrive at the true meaning and scope of the words." *State v. McLaughlin*, 265 S.W.3d 257, 267 (Mo. 2008)(internal quotations omitted). Whether Bella is "issue" and the importance of "issue" within the rules of descent contained in §474.010 is necessary to the determination of heirship in the instant case and the distribution language of §474.010(1) should not be skipped simply because of factual inapplicability when its language is necessary for determining how §474.010(2) should be construed.

Appellant's Point II

The trial court erred in ordering a partial distribution to Bella Lewis Gikovate

As noted in Appellant's brief, this point relied on ultimately duplicates the arguments presented in the first point relied on. Respondents simply express that there was no error in that Bella was correctly determined to be an heir, and therefore a distributee, and was appropriately entitled to a partial distribution as Appellant raised no other issues of error. Respondents incorporate all arguments presented in Point I by reference.

Respondents' Additional Argument

A. The Appellate Court Erred by Erroneously Declaring that the Adoption of a Person Automatically Places Existing Descendants of an Adoptee in the Adoptee's New Bloodline and Severs the Existing Relationships Between the Adoptee's Descendants and Adoptee's Biological Family

The Plain Language of RSMo §453.090 and §474.060 Does Not Make Any Change to the Family Bloodline of the Adoptee's Existing Descendants

In the Appellate Court's written opinion, the panel held that when a person is adopted, not only is the person placed in their adopting family's bloodline, but their existing descendants are also placed in the adopting bloodline. *In re Brockmire*, ED99103, 2013 WL 2484534 at 4. The opinion cited support for this determination in RSMo §453.090.1 (and a case citing similar verbage, omitted here) which reads:

> 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. (emphasis added)

The error in the Appellate Court's reasoning lies in precisely what the statute does not say. While it reads that a person who is adopted is placed in their new family "for every purpose," it makes absolutely no mention of the effect the adoption has on their existing descendants. Thus, the Appellate Court took a statute that talks about only the adopted person and used it as authority to effect changes on the family and bloodline of descendants who were not participants in the adoption proceeding. Such an interpretation exceeds the plain language of the statute and is outside the scope of any authority vested in the statute. It is of particular note that the legislature has considered the idea that an adult can be adopted, which was codified in RSMo §453.090.5 where a declaration was made that an adoptee "child" can be over the age of 18 years. This provides clear evidence that the legislature has considered the possibility of someone of child bearing age to be adopted and yet they did not make any provision in the statute to transfer an adoptee's children into the adopting family bloodline. Thus, the adoption statute lacks plain language changing the bloodline of an adoptee's children and also demonstrates that the legislature has had the opportunity to consider such an issue but has not added language effecting such changes in the statutes.

The other statute prescribing the effects of adoption can be found in the probate code, RSMo §474.060. Appellant's brief claims authority through this statute when he argues that "The purpose of RSMo §474.060 is clear on its face: it supplants the biological family of an adoptee and the adoptee's descendants with the adoptive family."

(Appellant's Substitute Brief, P8)(emphasis added). The assertion that an adoptee's descendants have their family replaced is not at all clear on the face of the statute. The operative portion of §474.060 states "an adopted person is the child of an adopting parent and not of the natural parents." However, just as in §453.090 the statute does not make mention of the effect upon an adopted person's pre-existing descendants. Had the legislature intended to do so, they could have easily included language to that effect by stating that an adopted person, and their descendants, are descendants of the adoptive parents. As no such language was used, it stands to reason that the legislature would not intend for one person in a family line to be able to change the legal bloodline of all of their existing descendants. It would make for quite the awkward Thanksgiving dinner if a family matriarch announced to her children and grandchildren that she got adopted that year and their new grandparent was some person they had never met before; all from a legal adoption they were not a part of. It should be held that when a person is adopted, their descendants maintain their existing family relationships.

The Appellate Court's opinion also relied upon several cases for its contention that children of an adoptee automatically take a new family lineage with the new bloodline the adoptee receives when adopted. These cases were *Williams v. Rollins*, 271 Mo. 150, 195 S.W. 1009 (Mo. 1917); *Commerce Bank, N.A. v. Blasdel*, 141 S.W.3d 434, 445 (Mo. App. W.D. 2004) (en banc); *St. Louis Union Trust Co. v. Hill*, 336 Mo. 17, 76 S.W.2d 685, 689 (Mo. banc 1934); *Bernero v. Goodwin*, 267 Mo. 427, 184 S.W. 74, 75 (Mo.

1916); and *In re Cupples' Estate*, 272 Mo. 465, 199 S.W. 556, 557 (Mo. 1917). However, all cases cited are distinguishable by the fact that none of the prior cases involved a child of an adoptee who was in existence at the time the adoptee was adopted. As such, all cases are indeterminate of the issue of what happens to the family line of an existing child when their parent is adopted.

The Appellate Court's error could also be simply stated that they improperly found that a person's extended family relationships are always contingent upon the respective family relationships their parents have. That is, the Appellate Court found that a grandparent is not a grandparent but is only the parent of a parent. However, Missouri law recognizes the existence of a grandparent and grandchild relationship independently of the parent. In the case of *In re C___ E___ R___*, 796 S.W.2d 423 (Mo. Ct. App. 1990), the court upheld the right of the paternal grandmother to receive visitation with her grandchild even though the father of the child, her son, defaulted in the proceedings, did not acknowledge paternity, was not married to the child's mother, did not pay support, or otherwise in any way establish a relationship with the child. *Id*. at 424. Thus, there is no legal need to always tie extended family relationships to the intermediate parent whose individual legal relationships are subject to change by their voluntary adoption.

The Severe Consequences of Replacing Bloodlines of Unrepresented Descendants of an Adoptee

Apart from the lack of plain language or legislative direction that the adoption statutes should replace the family bloodline of existing descendants of an adoptee, the legal ramifications of such an interpretation of the adoption statutes are severe and far reaching. First, the holding of the Appellate Court leaves the law of adoption in Missouri subject to severe manipulation and interference. If it were found that one person's adoption changed the family bloodline of their existing descendants, then a person could get themselves adopted in order to prevent a grandparent from filing for grandparent visitation rights since their adoption would sever the legal relationship. A person could also get themselves adopted to spitefully cut off their children from a parent's will that left everything to their grandchildren. The frightening thing about such manipulations is that adult adoptions are closed proceedings and the parents and children of an adult adoptee would have no notice and no knowledge of the change in their respective relations until (or unless) the adoptee chose to spring the legal declaration upon them. This leaves every person in Missouri at every time legally uncertain as to who their grandparents (or, from the older Missourians' additional perspective, their grandchildren) are because there could have been an intervening adult adoption that they were never told of. When the alternative interpretation of the adoption statute leaves all parties, except the adoptee, as they were, it is a much preferable and more legally sound conclusion. On

the opposite end of the spectrum, an adult might also hesitate to be adopted because of the effect it would have on their children. For example, if a person wished to be adopted because of their own lack of relationship with a parent, but knew their children had a strong relationship with the same (grand)parent, the prospective adoptee might forego the adoption because of the unintended adverse effects on their descendants. Thus, even thoughtful individuals who do not mean harm to their descendants would be negatively impacted by reading the adoption statutes to replace existing descendants' family bloodlines.

Second, Missouri has a public policy in favor of family harmony, which is violated when one person can unilaterally change the family relationships of their descendants. As already noted, there are several spiteful acts a person could accomplish by getting adopted as an adult. This potential legal disruption is a clear affront to family harmony. See *Hartman v. Hartman*, 821 S.W.2d 852 (Mo. 1991). On the contrast, there is no policy or benefit supported by an interpretation of the adoption statute that automatically changes the bloodline of an adoptee's descendants. The only plausible benefit would be the notion that a person might want their children to change family lines with them. However, this possible benefit weighs little when compared to the harm the automatic bloodline change causes. Further, if such a benefit is desired by the adult adoptees, they could adopt their own children after their adoption, which would thereafter transfer the children into the new family bloodline. This option presents a far better

approach to the public welfare of Missouri families, particularly when considered with the next point.

Last, if the adoption of a person automatically changes their descendants, the results are legally irreversible, regardless of the descendants' wishes. If a person was to get adopted today and their existing children automatically took the adopting family bloodline, the children could never place themselves back to the family they used to have. No matter how much a person wanted to keep their own family, they would not be allowed to, since to maintain their parents they would have to stay in the new family, and they could not reclaim their grandparents without foregoing their parents. Such a result leaves the existing descendants at the heel of an improper interpretation of the adoption statutes and without any legal recourse. The much better result is accomplished by using the plain language of the adoption statutes and finding that only an adoptee is placed into the adoptive family. This leaves an adoptee's existing descendants with their exact same family in every respect, with no interference. If the descendants wish to take the new family, they can thereafter be adopted by their parents.

Given these considerations, it should be found that the adoption statutes RSMo §453.090 and §474.060 do not replace the family bloodlines or relationships of the existing descendants of an adoptee and that Respondent Bella Gikovate remained a lawful lineal descendant of the Decedent Lonnie Brockmire.

B. **The Appellate Court erred in erroneously declaring that a person does not have a vested right to their existing family bloodline**

Missouri Law Recognizes and Provides Legal Rights to Extended Family Relationships

A simple search of the Missouri statutes turns up numerous instances where the legislature has recognized and tied rights in with a person's extended family relationships. For example, the Missouri Transfers to Minors Law relies on a definition of "Members of the Minor's Family" as including such relatives as a "grandparent, uncle, [or] aunt." RSMo §404.007. The subchapter of RSMo §210 dealing with "Homes for Children--Foster Homes--Child Placing Agencies—Licensing" relies upon a definition of "Related" that includes the same, as well as first cousins. RSMo §210.481. A statute authorizing financial aid to dependent children under certain circumstances specifically limits benefits to when a child is living with an enumerated list of relatives, including grandfathers, grandmothers, aunts, uncles, first cousins, nephews and nieces. RSMo §208.040.2. All around there are legal implications set for a person, particularly children, based upon their extended family members. While no law or case specifically prescribes a vested right to one's family bloodline, the clear legal inference of the legislature's repeated use of such relatives as persons deemed to be close to and possible caregivers for children implicitly creates a right to such relationships that is not intended to be

disrupted by the unilateral actions of an ancestor getting adopted. When those statutes are taken as a whole, it demonstrates that the legislature recognizes and provides legal standing for extended relationships with other people. If a parent got adopted and all of a sudden entirely new people, foreign to the adoptee's children, were given legal standing to exercise rights or priorities afforded under the law's recognition of relatives, it would defeat the purpose of such statutes. Further, it would deprive the adoptee's children and their extended family of the legal rights and relationships created by the legislature on the basis of their existing relationship.

No other extended relationship is afforded as much deference and rights in the State of Missouri as between a grandparent and grandchild. The most prominent and fixed recognition is derived from RSMo §452.402, which prescribes that grandparents may be directly awarded visitation time with their grandchildren. The statute is a clear acknowledgement and recognition of the importance of a grandparent-grandchild relationship. In the context of the instant case, during the lifetime of the Decedent, the Decedent would have, or should have, had the ability to file for visitation rights with Bella in spite of Sherri's adoption. Notably, the statute provides "grandparent" visitation rights and not "parents of parents" visitation rights, again demonstrating that extended family relationships are static, set at birth, and not contingent upon the continued respective relationship between a person's parents.

While the grandparent visitation statute does not specifically contemplate the adoption of the intermediate parent and its effect on the grandparent-grandchild relationship, it does contemplate the possible adoption of a grandchild. The pertinent section, RSMo §452.402(6) provides that "[t]he right of a grandparent to maintain visitation rights pursuant to this section may terminate upon the adoption of the child." Even then, when the grandchild is adopted (as opposed to the intermediate parent being adopted) the law only states that such an adoption "may" terminate the visitation but does not definitively end the same. For a biological grandparent's rights to survive even the adoption of the actual grandchild there must be substantial legislative intent and policy supporting this intergenerational connection. It logically follows that the legislative intent of adoption statutes would not seek to disrupt this relationship by the adoption of the intermediate parent.

Bella had a Vested Right to her Legal Bloodline and if her Mother's Adoption were to Sever the Legal Bloodline it Would Violate Bella's Due Process Rights

In his argument under the heading "Bella had no vested right to her legal relationship with Lonnie," Appellant addresses an argument Respondent raised that allowing the adoption of Sherri to prevent Bella from inheriting from her natural grandfather violates her procedural due process rights. In support of his position, Appellant cites cases demonstrating that due process applies only to vested rights and that

heirs are only determined at the time of death of a decedent. The fact that Bella was deprived of vested rights of her legal relationships with extended family – her bloodline - by Sherri's adoption, can be seen by simply looking at this situation as a whole. The day before Sherri was adopted, there would be no argument about whether Bella would be entitled to inherit under RSMo §474.010 as a descendant of the Decedent. The day Sherri was adopted, this right based upon Bella's legal relationship to the Decedent would have been terminated if Appellant's argument is enforced. Respondents do not argue that Bella was deprived of her standing as an heir on that day of adoption, but that she was deprived of her vested right as having a respective legal relationship with her grandfather. Such a relationship carries legal implications and rights, which may or may not come to direct fruition in life, but exist in their own form as a vested right and relationship. This Court has termed vested rights as being "absolute, complete, and unconditional to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency." *Commerce Trust Co. v. Weed*, 318 S.W.2d 289, 299 (Mo. 1958) (quotations omitted). When Bella was born, she automatically had her extended relationships, including grandparents, set at birth. All of the statutory recognitions and associated rights between herself and her extended family were set at that point and not contingent upon any further obstacle. Bella, or her extended family, would have been able to act upon those rights at any time.

Should Appellant's argument and the Appellate Court's opinion be allowed to stand, then Bella would be deprived of her vested relationships and their accompanying rights, based upon an adoption of Sherri that Bella had no part of or representation in. This is made clear when comparing the scenario of Sherri being adopted or if Sherri simply pre-deceased the Decedent. If adopted, Appellant argues that Sherri's adoption prevents Bella from inheriting from her natural grandfather. If pre-deceasing, Appellant would have no argument whatsoever to prevent Bella's standing to inherit as a descendant of a child of Decedent. Clearly, according to Appellant, Bella lost a legal relationship when Sherri was adopted. Such relationships are fixed and vested at a child's birth. Appellant suggests that the Decedent could have executed a will disinheriting Bella, so her right to have had standing as an heir is meaningless. Not so. Bella's right to her legal relationship is not based on any amount of property she inherits but by the legal implications of the relationship. Even if disinherited by a will, Bella would retain the right to contest such a will. Even if the intestacy statute was changed to provide all property directly to parents and not children or their descendants, Bella ought to still have the vested right of a relation to the Decedent as a lineal descendant.

Bella did not receive a right to inherit when she was born, but she did have her relationship with the Decedent fixed and vested as both a grandchild and the descendant of a child of Decedent's. Simply because such relationships might not ultimately result in an inheritance or any monetary value does not mean they do not exist or have attached

rights. Rather, the type of legal relationship Bella had to Decedent clearly had some legal rights and implications based on the existence of this case, if nothing else. It is a fundamental principle of Missouri's Constitution that "That no person shall be deprived of life, liberty or property without due process of law." Mo. Const. Art. I, § 10. To allow Appellant's argument that Sherri's adoption removed Bella's relation to the Decedent would allow a legal proceeding to violate Bella's due process rights by severing her legal relationships with her extended family, the Decedent in particular, without having been represented. Given this, Bella should be found to have retained her legal relationship as a lineal descendant of the Decedent after Sherri's adoption.

Interpreting the Adoption Statutes as Changing the Bloodline of Descendants of Adoptees Creates an Impermissible Retrospective Effect of the Statute

Another substantial constitutional problem with the Appellate Court's interpretation of the adoption statutes is that it creates a retrospective effect by changing the legal bloodline and family relationships of those who are not party to the adoption. "Retrospective laws are generally defined as laws which take away or impair rights acquired under existing laws, or create a new obligation, impose a new duty, or attach a new disability in respect to transactions or considerations already past." *Doe v. Roman Catholic Diocese*, 862 S.W.2d 338, 340 (Mo. 1993) (quotations omitted). Ruling that a parent's adoption changes the legal bloodline of their descendants retrospectively

changes the descendants' vested legal relationships, which would not otherwise have been changed without legal process. This violates the Missouri Constitution Article I Sections 10 and 13. "It is a well accepted canon of statutory construction that if one interpretation of a statute results in the statute being constitutional while another interpretation would cause it to be unconstitutional, the constitutional interpretation is presumed to have been intended." *Blaske v. Smith & Entzeroth, Inc.*, 821 S.W.2d 822, 838-839 (Mo. 1991). As a ruling that existing descendants of adoptees automatically take the adoptee's new bloodline violates due process and retrospectively changes vested rights, canons of statutory construction require that the adoption statutes be interpreted as only replacing the adoptee's family line.

Existing Case Law

The instant case is of course extraordinarily rare, given the number of factors going into a Decedent dying intestate with a lineal descendant who is not the descendant of a child. Despite thorough searches, Respondents found only one case with comparable familial relationships. In a California case, a court considered the same issue before this Court; whether existing children of an adopted child are heirs of their natural grandparents, the parents of the adoptee. *Estate of Davis*, 169 Cal. App. 3d 471 (Cal. App. 3d Dist. 1985). Although the case obviously dealt with a different statute than is before this Court, the decision still made several significant and applicable insights and

policy declarations. First, "It does not necessarily follow that a natural grandchild in being at the time of his parent's adoption is so removed." *Id*. As Respondents have argued, the intermediate adoption of the parent of a grandchild should not impinge upon the grandchild's standing and relationship with the grandparent. The *Davis* court also discussed how, just as in Missouri law, the adoption statutes only transferred the adoptee to the adoptive family's bloodline, and ought not to transfer a pre-existing descendant of the adoptee with them. *Id*. Last, the case puts it simply, just as it is in Missouri, that there is no authority in any statute that declares a grandchild should be prevented from inheriting from their grandparent simply due to a parent's adoption. *Id*.

CONCLUSION

While this case presents a rare and legislatively unexpected scenario, a reasonable reading of governing statutes provides a clear result: Respondent Bella Lewis Gikovate is an heir of the Decedent. The statute governing intestate descent has clear intent to provide an inheritance to lineal descendants of intestate parties. Further, the statute only harmonizes when it is read to hold Bella as an heir of the Decedent. Last, it would be the probable intent of the average intestate party to bequest their property to a grandchild sooner than a collateral heir.

The adoption statutes require a simple reading of their plain language to find that there is no direction or intent to change the family bloodline of existing descendants of an adoptee. Further, the implications of changing such family bloodlines of an adoptee's descendants include causing widespread legal uncertainty and violating public policy.

Apart from the statutory directions, it has been shown that equity, due process, and logic all call for Bella to be determined as an heir of the Decedent. To not do so would allow a third party to disrupt recognized and protected relationships between an adoptee's descendants and their existing extended family relationships. For all these reasons, Respondents respectfully pray this Court affirm the decision of the Honorable Scott A. Lipke determining that Respondent Bella Lewis Gikovate is the only heir of the decedent, Lonnie Brockmire, and allowing the partial distribution of the estate.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE AND

CERTIFICATE OF BRIEF PURSUANT TO RULE 84.06(c)

Comes now John Loesel, attorney for Respondents, and certifies to the Court as follows:

1. The original Respondents' Substitute Brief in this matter has been signed by the attorney for Respondents.
2. The brief submitted herein complies with the limitations contained in Rule 84.06(b).
3. The number of words contained herein, exclusive of the title page and certificate page, as determined by Microsoft Word is 6,986.
4. A copy of the brief has been served upon all counsel of record through the Court's electronic filing notification system on this 12th day of November, 2013

Respectfully submitted,

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