

THE SUPREME COURT OF THE STATE OF WASHINGTON
NO. 95039-3
(Court of Appeals No. 492229-9-II)

In re the Matter of the Estate of

DEBORAH E. REID,

Deceased

ANSWER OF DILLON REID TO PETITION FOR
DISCRETIONARY REVIEW

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IDENTITY OF ANSWERING PARTY

Dillon Reid, son of decedent Deborah Reid, submits this answer to Brandon Saludaes petition for review.

INTRODUCTION

Issue Presented for Review. This case presents the issue of statutory construction of the meaning of the word "child" under Washington's Wrongful Death Statute. Does "child" under RCW 4.20.020 include someone who was adopted by others prior to decedent's death?

Decision of Court of Appeals. The Court of Appeals, Division II upheld the trial court's decision that the right of a child to recover as a statutory beneficiary under Washington's wrongful death statute is extinguished by the child's adoption by others prior to decedent's death. Giving meaning to all the terms of the adoption statutes and the wrongful death statute, RCW 4.20.020 with RCW 26.33.260, the Court of Appeals ruled that because of his adoption, Saludaes became the "child, legal heir, and lawful issue" of his adoptive parents for all intents and purposes and was not the child his biological mother but the child of his adoptive parents "for all legal incidents" including wrongful death actions.

The petition for discretionary review is filed by Saldares, a person adopted by others prior to Decedent's death. Prior to her death, the Decedent voluntarily relinquished her parental rights by consenting to the adoption of Brandon Saldares. Decedent's written consent to adoption was expressly approved by the court in a decree of adoption. The decree of adoption terminated the parent-child relationship between her and Saldares. The petitioner herein asks the court to disregard his adoption and allow him to qualify as a claimant in the wrongful death proceeds as a "child" of decedent.

STATEMENT OF THE CASE

Saldares was born on August 19, 1982 to Deborah Reid, his *biological* mother and Charles Anthony Graves, his *biological* father. When he was 3 years old, Saldares was adopted by Diane Saldares and Michael Saldares. In the decree of adoption, the Superior Court of Clark County, approved Deborah Reid's written consent to adoption and entered a decree of adoption in which Saldares was constituted the child of Diane Saldares and Michael Saldares.

The decedent, Deborah Reid, passed away on January 8, 2008. At the time of her death, Saldares was 28 years old.

Deborah Reid had two children at the time of her death, Dillon Reid and Laurene Reid, both children born to her but who had not been adopted by others.

The Honorable Suzan Clark approved the settlement of the wrongful death claim in the Estate of Deborah Reid. In cross motions for summary judgment, Judge Clark granted the Motion for Summary Judgment made by Dillon Reid and Laurene Reid. Judge Clark determined that *“Brandon Saludaes, a child born to Deborah E. Reid, who was adopted by others prior to Deborah Reid’s death is not a statutory beneficiary under the terms of RCW 4.20.020, the Washington wrongful death statute, and is therefore not entitled to a share of the wrongful death recovery made on behalf of decedent.”*

In its part published opinion filed on August 8, 2017, Division II of the Washington State Court of Appeals upheld the trial court’s ruling that *a child born to decedent who was adopted by others prior to decedent’s death is not a statutory beneficiary under the terms of RCW 4.20.020, the Washington wrongful death statute, and is therefore not entitled to a share of the wrongful death recovery made on behalf of decedent.*

Petitioner for review, Saldares, continues to argue that his adoption did not affect his status as Reid's child for purposes of Washington's wrongful death statute and contends that "child" as used in RCW 4.20.020, means *any* biological child of the decedent.

ARGUMENT

1. Petitioner has failed to Meet the Requirements of Rules of Appellate Procedure 13.4. and Thus His Petition for Review Should be Denied.

RAP 13.4 dictates that when petitioning for discretionary review by the Supreme Court, the petition for review will be accepted by the Supreme Court, only if:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court. The petitioners allege, incorrectly, that No. 1 and No. 2 apply and, thus, justify this Court in granting discretionary review.

2. The Petitioner here wrongly contends that the Court of Appeals Decision in the Present Matter is in Conflict with this Court's Decision in a Case Known as Roderick's Estate, 158 Wash. 377, 291 P. 325 (1930) and a Case Known as Hale v. Department of Labor and Industries (20 Wn 2d 14, 145 P. 2d 285 (1944) and a Case Known as In Armijo v. Wesselius, 73 Wash 2d 716 (1968)

Roderick and *Hale* have been abrogated by this court in a case known as *Fleming*. *Armijo v. Wesselius* is inapplicable.

Saludares in his petition for review focuses on *In re Roderick's Estate*, 158 Wash. 377, 291 P. 325 (1930). Petitioner for review asks this court to not consider the statutory scheme or explicit statutory language in the adoption statute or as set out in the rules of statutory interpretation but at a 1930 case, *Roderick's Estate* and a 1944 case, *Hale v. Department of Labor and Industries* (20 Wn 2d 14, 145 P. 2d 285 (1944)). Saludares asks for an interpretation of the word "child" that is inconsistent with the statutory scheme and in conflict with statutory language.

Petitioner cites the *Wesselius* case in support of his position. *Wesselius* is not on point and the issue in *Wesslius* and this case is distinguishable factually and is inapplicable here. In *Armijo v. Wesselius*, 73 Wash 2d 716 (1968), the court considered the class of people who could bring a tort of outrage. In this 1968 case in which issues of legitimacy were a concern,

the court interpreted the word "child" in Washington's wrongful death statute to include an illegitimate child. This ruling is consistent with Dillon Reid's position in this case. An "illegitimate child" is still a legal child unless they are adopted by other persons.

Both petitioner's cases, *Roderick* and *Hale v. Department of Labor*, as noted by the Court of Appeals were abrogated by the Supreme Court's decision in *Fleming*, 143 Wn.2d at 419, a 2001 case.

As noted by the Court of Appeals, our Supreme Court expressly abrogated the *Roderick* court's approach in *Fleming* in 2001 when it held in a probate case that a mother who voluntarily relinquished her parental rights to her son could not later inherit from him. *Fleming*, 143 Wn.2d at 419. In 2001, the *Fleming* court explicitly departed from *Roderick*, referencing adoption statutes and explaining: "Contemporary probate and adoption statutes provide ample evidence the Legislature has abandoned consanguinity as the overriding policy consideration where the parent-child relationship is terminated. *Fleming*, 143 Wn.2d at 419. Like the appellant in *Fleming*, Saldares has cites outdated case law. In *Fleming*, the appellant asserts that,

unless there is a statute specifically stating a biological parent must retain legal status as a parent to qualify for an intestate distribution, the courts must defer to the concept of consanguinity and distribute the parent's share to the biological parent. In discussing *In re Estate Roderick*, 158 Wash. 377, 381, 291 P. 325 (1930), the Supreme Court in *Fleming* observes, "the appellant in *Fleming* cites outdated case law to make his point. Although the court in *In re Estate Roderick*, 158 Wash. 377, 381, 291 P. 325 (1930) page 295 took the deferential approach (appellant) suggests, we have since abandoned that approach in response to legislative changes and policy changes that predominate in modern probate law. See, e.g., *In re Estates of Donnelly*, 81 Wash.2d 430, 502 P.2d 1163 (1972). *Fleming* at page 285.

The Court of Appeals stated in the present case: "The sentiment regarding the effect of adoption has remained inviolate in the years since. *In re Estate of Fleming*, 143 Wn.2d 412, 421, 21 P.3d 281 (2001) "In order to give a child a fresh start [after an adoption], all interests and rights between the biological parent and child are severed when that relationship is terminated."); *Mitchell v. Doe*, 41 Wn.App. 846, 849-50, 706

P.2d 1100 (1985) (reasoning, "There is no policy stronger or more consistently followed in this state than that protecting the sanctity and privacy of adoptions. When an adoption has become final, previous ties to natural parents are completely severed and a wholly new relationship is created."); see also *In re Application of Santore*, 28 Wn.App. 319, 623 P.2d 702 (1981); *In re Adoption of Baby Girl K.*, 26 Wn.App. 897, 615 P.2d 1310 (1980)."

The critical question in *Fleming* which abrogated *Roderick's Estate* was: What meaning to give to the term "parent" as used in the probate statute, RCW 11.04.015(2)(b). Does "parent" refer to legal status as parent, or does it refer to a biological parent? The probate statute which the court was interpreting in *Fleming* did not define the term "parent." The Court of Appeals in *Fleming* interpreted *parent* to refer to a person's legal status, thus disqualifying Fleming from an intestate distribution under RCW 11.04.015(2)(b).

Challenging this interpretation on appeal, the appellant in *Fleming* argued that consanguinity must be inferred into all modern probate law. Like Saldares in this case, appellant asserted unless there is a statute specifically stating a biological

parent must retain legal status as a parent to qualify for an intestate distribution, the courts must defer to the concept of consanguinity and distribute the parent's share to the biological parent. In abrogating *Estate Roderick*, 158 Wash. 377, 381, 291 P. 325 (1930), the court stated, "we have since abandoned that approach in response to legislative changes and policy changes that predominate in modern probate law. The Fleming Court observed that both contemporary probate and adoption statutes provide ample evidence the Legislature has abandoned consanguinity as the overriding policy consideration where the parent-child relationship is terminated. For instance, RCW 11.04.015(2)(b) provides that an adopted child is not an heir of his or her biological parents. RCW 26.33.260(1) provides that an adoptive child enjoys complete inheritance rights from the adoptive parent. Petitioner for review seeks to limit Fleming to the probate statute, however, the *Fleming* court specifically mentions adoption statutes in its analysis.

DECISION CONSISTENT WITH OTHER STATES

The decision of the Court of Appeals, Division II in this case is in accord with decisions of courts in other states who have considered this same question. Where there was no

definition of “child” in the state’s wrongful death statute, courts have found that the “plain meaning” of “child” in a wrongful death statute does not include children adopted by others prior to decedent’s death. See Cumulative Report. 67 A.L.R. 2d 745. Case law in California, Arkansas, Michigan, Virginia, and Florida have held that the “plain meaning” of “child” is found in the context of state statutes, specifically referencing adoption and probate statutes. These courts have concluded that adoption cuts off the rights of a child adopted by another from being a statutory beneficiary in a wrongful death action. The California Appellate court in Phraner v. Cote Mart, Inc., 55 Cal. App. 4th 166, 63 Cal. Rptr. 2d 740 (4th Dist. 1997) addressing this issue observed that: *“Other states addressing this issue generally reach the same result. (See, e.g., Matter of Estate of Renaud (1993) 202 Mich.App. 588 [509 N.W.2d 858]; Johnson v. Parrish (1981) 159 Ga.App. 613 [284 S.E.2d 111]; Wasley v. Brown (E.D.Va. 1961) 193 F.Supp. 55. Contra, Fillingame v. Patterson (S.D.Miss. 1988) 704 F.Supp. 702.”*

Petitioner contends “child” should be given its dictionary meaning. States that have considered this question, like the Court of Appeals have all held that the “plain meaning” of “child”

is found in the context of state statutes, specifically referencing adoption and probate statutes and that adoption cuts off the rights of a child adopted by another from being a statutory beneficiary in a wrongful death action.

RULES OF STATUTORY INTERPRETATION

3. Under the plain meaning and consistent with the Washington adoption statute, as a child placed for adoption prior to Deborah Reid's death, Saludares is not a statutory beneficiary under the Wrongful Death Statute. In the present case, the rules of statutory construction to do not support petitioner's position.

The Court of Appeals decision interprets RCW 4.20.020 definition of child consistent with Washington's adoption statutes "to achieve a harmonious total statutory scheme . . . which maintains the integrity of the respective statutes."

When engaging in statutory interpretation, the court endeavors to determine and give effect to the legislature's intent. *Blessing*, 174 Wn.2d at 231. As observed by the Court of Appeals in deciding this case, cases interpreting the effects of adoption under Washington law consistently treat the adoptive family as the natural family, favoring providing a "clean slate" to adopted children over consanguinity. The Court of Appeals in this case correctly decided the question of statutory interpretation

in this case in the context of the broad legislative objective of giving the adopted child a "fresh start" by treating the child as the child of the adoptive parent and severing all ties with the past.

The rules of statutory construction pertinent to this case and followed by the Court of Appeals in making its decision are listed below and require that the court determine legislative intent. The legislature is presumed to be familiar with its own prior legislation. *The entire sequence of all statutes relating to the same subject matter are considered.* The court should avoid reading a statute in ways that will lead to absurd or strange results.

1. When called on to interpret a statute, the courts give effect to legislative intent. *State v. Hammock*, 154 Wn. App. 630. (2010)
2. To determine legislative intent, the court looks first to the plain language of the statute. *Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wash.2d 489, 498, 210 P.3d 308 (2009).
3. Plain meaning is discerned from the ordinary meaning of the language at issue, the context of the statute in which the provision is found, related provisions, and the statutory scheme as a whole. *State v. Jacobs*, 154 Wash.2d 596, 600, 115 P.3d 281 (2005). *In re Estate of Blessing*, 174 Wash. 2d 228 (2012).
4. If the statute is unambiguous, the court's inquiry is at an end. *Cerrillo v. Esparza*, 158 Wash.2d 194, 201, 142 P.3d 155 (2006).

5. The legislature is presumed to be familiar with its own prior legislation relating to the subject at hand and with the court decisions construing legislation. *El Cordoba Dormitories, Inc., v. Franklin County Public Utilities District*, 82 Wn. 2d 858, 862-63, 514 P. 2d. 524 (1973).

6. The court avoids reading a statute in ways that will lead to absurd or strange results. *Lane V. Harborview Medical Center*, 154 Wn.App. 279, 289, 227 P.3d 297 (2010). *In re Dependency of M.S., Sigurdson v. State of Washington* 156 Wn. App. 907, 236 P. 3d 214 (2010).

The legislature, in enacting the Wrongful Death Act, is presumed to know the adoption statute and the meaning of the word “child” contained in the adoption statute as a legal relationship and not one of consanguinity.

Where...two statutes relate to the same subject matter, the court will, in its attempt to ascertain legislative purpose, read the sections as constituting one law to the end that a harmonious total schema maintains the integrity of both is derived. Beach v. Board of Adjustment 73 Wash 2d 343 (1968).

The Court of Appeals in this case correctly observes that Saldares interpretation of the meaning of the word “child” would call into question the finality many adoptions. The Saldares interpretation would also lead to absurd or strange results. Despite the clear language of RCW 26.33.260, an adoptee would remain a child of his biological parent in most contexts. A biological child could argue that he is entitled to the rights and

privileges typical of legal child in a variety of contexts (i.e., health insurance), unless the legislature specifically states otherwise.

Saldares' interpretation of child under the Wrongful Death statute directly contradicts the express terms of RCW 26.33.260(1) which delineates the effect of an adoption:

The entry of a decree of adoption divests any parent or alleged father who is not married to the adoptive parent or who has not joined in the petition for adoption of all legal rights and obligations in respect to the adoptee, except past-due child support obligations. The adoptee shall be free from all legal obligations of obedience and maintenance in respect to the parent. The adoptee shall be, to all intents and purposes, and for all legal incidents, the child, legal heir, and lawful issue of the adoptive parent, entitled to all rights and privileges, including the right of inheritance and the right to take under testamentary disposition, and subject to all the obligations of a natural child of the adoptive parent.

To accept Saldares's interpretation and hold that his adoption did not affect his status as Reid's child for the wrongful death claim, the court would have to ignore the portion of RCW 26.33.260(1) which states, "The adoptee shall be, to all intents and purposes, and for all legal incidents, the child, legal heir, and lawful issue of the adoptive parent."

The Court of Appeals observes, the right to recover as a statutory beneficiary in a wrongful death action is a "legal incident."

4. The Petitioner wrongly contends there was no relinquishment in the adoption.

In the unpublished portion of the Court of Appeals decision, the Court held that Deborah Reid voluntarily relinquished her parental rights by consenting to Saludares's adoption. The approval of her consent and decree of adoption effectively terminated the parent-child relationship. Appellant Brandon Saludares claims that the parent-child relationship with Deborah Reid remains intact, he is still her "child," because there was no "relinquishment" or termination order in this adoption. This is not true. There was a "relinquishment" because a voluntary written consent to adoption was approved by the court. The decree of adoption, approving the consent, was a termination order.

A "relinquishment" is defined by statute and by case law as "the voluntary surrender of custody of a child to the department, an agency, or *prospective adoptive parents*." RCW 26.33.020(11). *In re Dependency of M.S., Sigurdson v. State of Washington* 156 Wn. App. 907, 236 P. 3d 214 (2010).

The Decree of Adoption entered August 19, 1982 states that Brandon Jeffrey Saludares "*is constituted the child of the petitioners, Diane Saludares and Michael Saludares, and each of*

them is hereby constituted a parent of the child to the same degree and effect as if the child has been born as the issue of the marriage existing between petitioners.” The Findings of Fact and Conclusions of Law supporting the Decree of Adoption of Brandon Saludaes by Diane and Michael Saludaes provides that *“The Petition of Diane Saludaes and Michael Saludaes for the adoption of said child (Brandon) should be granted and to all legal intents and purposes said child should be the child of Petitioners.”* The consent to adoption of her natural child executed by Deborah Reid states: *“That I fully understand that the nature and effect of a decree of absolute adoption is to extinguish and terminate all rights, duties, obligations and liabilities of the parent or parents of the adopted child in relation to the custody, maintenance and education of the child thereafter, and also to deprive the parents or parent permanently of her or their parental rights in respect to the adopted child.”*

The consent to adoption of Deborah Reid is a consent to termination of the parent-child relationship between her and Brandon Saludaes. Her consent was *specifically* approved by the court in its decree of adoption.

CONCLUSION

The Court of Appeals properly declared that a child born to Decedent but who was adopted by others prior to Decedent's death is not a statutory beneficiary under the terms of RCW 4.20.020, the Washington wrongful death statute and is therefore not entitled to a share of the wrongful death recovery made on behalf of decedent. The decision of the Court of Appeals is not in conflict with a decision of the Supreme Court or a decision of the Court of Appeals. This Court is respectfully requested to deny, in total, the Petition for Discretionary Review herein.

Dated this 23 day of October, 2017.



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