

FILED
SEP 28 2017
WASHINGTON STATE
SUPREME COURT


FILED
COURT OF APPEALS
DIVISION II

95039-3

2017 SEP 26 AM 9:52

NO. 49222-9-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

BY 
DEPUTY

In re the Matter of the Estate of

DEBORAH E. REID,

Deceased.

APPEAL FROM THE SUPERIOR COURT

HONORABLE SUZAN CLARK

PETITION FOR REVIEW

BEN SHAFTON
Attorney for Appellant Brandon Saldares
Caron, Colven, Robison & Shafton
900 Washington Street, Suite 1000
Vancouver, WA 98660
(360) 699-3001

Table of Contents

Identity of Petitioner1

Decisions of the Court of Appeals1

Issues Presented for Review1

Statement of the Case.....2

Argument4

 I. Introduction.....4

 II. As One of Ms. Reid’s Children, Mr. Saldares
 Is a Statutory Beneficiary under the Wrongful Death
 Statute.....4

 III. The Decree of Adoption Did Not Terminate the
 Parent-Child Relationship between Mr. Saldares
 And Ms. Reid.....5

 IV. There Was No Relinquishment.....15

Conclusion20

Appendices.....21

 Court of Appeals Decision.....22

 Order Denying Motion to Publish.....36

 Appendix of Statutes.....37

 Appendix of Uniform Laws.....43

Table of Authorities

Cases:

Adoption of Henderson, 97 Wn.2d 356, 644 P.2d 1178 (1982)20

Adoption of Jackson, 89 Wn.2d 945, 578 P.2d 33 (1978).....20

American Continental Insurance Company v. Steen, 151 Wn.2d 512,
91 P.3d 864 (2004)14

Armijo v. Wesselius, 73 Wn.2d 716, 440 P.2d 471 (1968)5, 14

Custody of Smith, 137 Wn.2d 1, 969 P.2d 21 (1998).....9

Dependency of M.D., 110Wn.App. 524, 42 P.3d 424 (2002)19

Dependency of M.S., 156 Wn.App. 907, 236 P.3d 214 (2010)19

Donnelly's Estate, 81 Wn.2d 430, 502 P.2d 1163 (1973).....10, 11

El Cordoba Dormitories, Inc., v. Franklin Public Utilities District, 82
Wn.2d 858, 862-63, 514 P.2d 524 (1973).....13

Estate of Fleming, 143 Wn.2d 412, 21 P.3d 281 (2001).....11

Estate of Lee v. City of Spokane, 101 Wn.App. 158, 2 P.3d 379
(2000).....12

Grant County Prosecuting Attorney v. Jasman, 183 Wn.2d 633,
354 P.3d 846 (2015)4

Hale v. Department of Labor and Industries, 20 Wn.2d 14,
145 P.2d 285 (1944)6, 7, 9, 10, 11, 12, 13

Industrial Coatings Company v. Fidelity and Deposit Co. of Maryland,
117 Wn.2d 511, 817 P.2d 393 (1991).....10

Interest of J., 99 Wn.App. 473, 994 P.2d 29 (2000).....20

<i>Jenkins v. Bellingham Municipal Court</i> , 95 Wn.2d 574, 627 P.2d 1316 (1981)	8
<i>Kilian v. Atkinson</i> , 147 Wn.2d 16, 21, 50 P.3d 638(2002)	12
<i>Lunsford v. Saberhagen Holdings, Inc.</i> 166 Wn.2d 264, 208 P.3d 1092 (2009)	10
<i>Marriage of Furrow</i> , 115 Wn.App. 661, 63 P.3d 821 (2003)	19
<i>Roderick's Estate</i> , 158 Wash. 377, 291 P. 325 (1930)....	6, 7, 8, 9, 10, 11, 13
<i>State ex rel. Van Cleave v. Frater</i> , 21 Wn.2d 213, 150 P.2d 391 (1944)	7
<i>Wood v. Dunlop</i> , 83 Wn.2d 719, 521 P.2d 1177 (1974)	12
Statutes:	
Former Rem. Comp. Stat. § 1699	7, 8, 9, 37
RCW 4.20.020	1, 4, 5, 13, 37
RCW 11.02.005(6)	10, 38
RCW 11.04.085	9, 10, 11, 12, 13, 38
RCW 26.33.010	14, 38
RCW 26.33.020(8)	16, 38
RCW 26.33.030(2)	18, 39
RCW 26.33.080(1)	16, 39
RCW 26.33.080(2)	16, 39
RCW 26.33.090(2)	16, 39
RCW 26.33.090(3)	16, 39
RCW 26.33.090(4)	16, 18, 39

RCW 26.33.090(5).....	16, 39
RCW 26.33.130(1).....	16, 40
RCW 26.33.130(2).....	12, 15, 16, 40
RCW 26.33.150(1).....	16, 40
RCW 26.33.160(1)(b).....	16, 40
RCW 26.33.180.....	17, 41
RCW 26.33.200(1).....	17, 41
RCW 26.33.240(1).....	17, 42
RCW 26.33.240(3).....	17, 42
RCW 26.33.260(1).....	7, 8, 12, 17, 42

Rules:

RAP 13.4(b)(1), (2).....	4
--------------------------	---

Other Authority:

Uniform Adoption Code of 1969 in Section 14.....	13, 43
1994 Uniform Adoption Code, Section 1-105.....	13, 44

IDENTITY OF PETITIONER

This Petition for Review is filed on behalf of Brandon Saldares, the Appellant.

COURT OF APPEALS DECISIONS

Mr. Saldares seeks review of decision of the Court of Appeals in this matter filed on August 8, 2017. Mr. Saldares filed a motion to publish a portion of the Court's decision on August 23, 2017. This motion was denied by order dated August 30, 2017. The appendix contains copies of the decision of the Court of Appeals and the Order Denying Motion to Publish.

ISSUES PRESENTED FOR REVIEW

The following issues are presented for review:

1. Is Mr. Saldares a statutory beneficiary under RCW 4.20.020 and therefore entitled to share in the proceeds of a wrongful death settlement obtained in regard to the death of his natural mother?
2. Did Mr. Saldares' adoption preclude him from being a statutory beneficiary of the wrongful death claim?
3. Did Deborah Reid relinquish Mr. Saldares?

STATEMENT OF THE CASE

Deborah Reid gave birth to Brandon Saldares when she was seventeen years old. (CP 65-67, 71, 85) Diane Saldares—the mother of Deborah Reid—and Michael Saldares adopted Mr. Saldares when Deborah Reid and Mr. Saldares were nineteen and two years of age, respectively.¹ (CP 55-56) Because of the intra-familial nature of the adoption, Mr. Saldares continued to enjoy a warm relationship with his natural mother. (CP 183-85) Ms. Reid subsequently gave birth to Laurene Reid and Dillon Troxel-Reid. (CP 76) The two were subject of dependency proceedings beginning in 2006. Mr. Saldares was described as their brother in those proceedings. He attended court hearings and otherwise provided information to social workers. (CP 76-80, 90, 97)

Ms. Reid died in January of 2008 as a result of an overdose of opiates. Mr. Saldares sought and obtained custody of his sister after that occurred. (CP 110, 120-25, 169-78)

In 2010, Laurene Reid successfully petitioned to become personal representative of her mother's estate for the sole purpose of pursuing a wrongful death claim against the persons who supplied the opiates that led

¹ The course of the adoption proceedings will be discussed in the section of this petition devoted to argument.

to her death. All three of her children, including Mr. Saludaes, were named as children and heirs in the petition. (CP 1-5)

A wrongful death action was subsequently filed. When deposed, Laurene Reid referred to Mr. Saludaes as her brother. (CP 181) The matter was ultimately settled with court approval for \$850,000.00. The settlement itself contained no differentiation among and between beneficiaries or any component for loss of future wages or other monetary contributions Ms. Reid could have been expected to make to her children. (CP 10, 18, 25) The settlement was approved, and proceedings were commenced to determine distribution of the net proceeds. (CP 29-30)

Upon suitable motion, the trial court ruled that Mr. Saludaes was not entitled to any part of the settlement because he was not a child of the decedent. (CP 34-45, 126-38, 187, 253-55) Mr. Saludaes appealed. The Court of Appeals affirmed in an opinion published in part. In the published portion, it held that Mr. Saludaes was not a statutory beneficiary because the decree of adoption terminated his parent-child relationship with Ms. Reid. In the unpublished portion, it ruled that the parent-child relationship between Mr. Saludaes and his natural mother had been terminated by her relinquishment of him in the adoption proceeding.

ARGUMENT

I. Introduction.

The Court of Appeals held that Mr. Saldares is not a statutory beneficiary under the wrongful death statute because his adoption ended the parent-child relationship between him and Deborah Reid. That decision conflicts with decisions of both the Supreme Court and the Court of Appeals as the analysis below will demonstrate. The Supreme Court should therefore grant review. RAP 13.4(b)(1), (2)

II. As One of Ms. Reid's Children, Mr. Saldares Is a Statutory Beneficiary under the Wrongful Death Statute.

The wrongful death statute, RCW 4.20.020, identifies the beneficiaries of a wrongful death action to include the decedent's children. The term "child" is not defined in the statute. It must therefore be given its dictionary definition. *Grant County Prosecuting Attorney v. Jasman*, 183 Wn.2d 633, 643, 354 P.3d 846 (2015) The term "child" means, among other things, a son or daughter. Slip Opinion, p. 4. fn. 2. Mr. Saldares is a natural son of the decedent and therefore her child. Under well-accepted authority governing statutory interpretation, he qualifies as a beneficiary under RCW 4.20.020.

Furthermore, the Supreme Court has stated that a child for the purposes of RCW 4.20.020 is any natural or adopted child of the decedent. *Armijo v. Wesselius*, 73 Wn.2d 716, 719, 440 P.2d 471 (1968) Once again, Mr. Saldares qualifies as a beneficiary since he is natural child of the decedent. The decision of the Court of Appeals to the contrary conflicts with this decision of the Supreme Court. The Supreme Court should take review for that reason.

III. The Decree of Adoption Did Not Terminate the Parent-Child Relationship between Mr. Saldares and Ms. Reid.

The Court of Appeals ruled that Mr. Saldares' was not a statutory beneficiary of the wrongful death action because his adoption by his grandparents terminated the parent-child relationship between him and Deborah Reid. This ruling conflicts with well settled authority on interpretation of statutes. It also conflicts with decisions of the Supreme Court to the effect that adoption does not end the parent-child relationship between the natural parent and the adoptee and does not by itself deprive the adoptee of the benefits of the relationship with the natural parent.

Being a statutory beneficiary of a wrongful death action is clearly one legal benefit of being a child of a person who dies through the fault of another. An adoptee remains entitled to claim a benefit based on being the child of the natural parent in the absence of a statute clearly depriving the

adoptee of such a benefit. The Supreme Court has held that in the absence of a statute eliminating such a right, an adoptee is entitled to inherit from the natural parent. *Roderick's Estate*, 158 Wash. 377, 291 P. 325 (1930), In coming to this decision, it relied on the general rule that, in a legal sense, an adoptee is the child of both the natural parents and the adoptive parents. 158 Wash. at 381 The Supreme Court has also held that a child's adoption by others after the deaths of her parents would not deprive her of industrial insurance benefits on account of his father's death. The relevant statute did not exclude adoptees from the definition of "child." *Hale v. Department of Labor and Industries*, 20 Wn.2d 14, 145 P.2d 285 (1944) Citing *Roderick's Estate*, *supra*, it stated:

We are committed to the rule that by adoption there is no dissolution of the natural relationship of kindred and that an adopted child will not be deprived of the benefits arising from such natural relationship.

20 Wn.2d at 17 The notion that an adoptee is the child of both the natural and adoptive parents has never been overruled. Neither has the rule in *Hale v. Department of Labor and Industries*, *supra*, cited above. On the authority of these two cases, the adoption does not eliminate Mr. Saludaes' status as a statutory beneficiary of the wrongful death action. The contrary decision of the Court of Appeals conflicts with these two decisions. Therefore, the Supreme Court should take review.

Adoption is a statutory procedure that was unknown at common law. *State ex rel. Van Cleave v. Frater*, 21 Wn.2d 213, 233-34, 150 P.2d 391 (1944). The effect of a decree of adoption must therefore be governed by statutory language. The rules set out in *Roderick's Estate, supra*, and *Hale v. Department of Labor and Industries, supra*, have not been changed by subsequent amendment of the adoption statutes. The decision in *Roderick's Estate, supra*, was based on the Court's interpretation of former Rem. Comp. Stat. § 1699. That statute set out the effects of a decree of adoption. It stated that such a decree divests the natural parent of all legal rights and obligations in respect to such child; that the child is made free of the all legal obligations of obedience and maintenance to the natural parent; and that the adoptee becomes the child and legal heir of the adoptive parents, entitled to all rights and privileges of such a relationship. 158 Wash. 378-79. The statute in effect when Mr. Saldares was adopted that describes the effect of a decree of adoption is RCW 26.33.260(1).² Its language is materially identical to that of former Rem. Comp. Stat. § 1699. It states that a decree of adoption (1) divests the natural parent of all

² Mr. Saldares' adoption was governed by RCW 26.33 as adopted in 1984 Laws of Washington, Chapter 155. The statute has been amended a number of times since then. Citation will be made to the Revised Code of Washington because there are no material differences between the 1984 enactment and the current version that affect our case.

legal rights and obligations toward the adoptee except for past due child support; (2) frees the adoptee from all legal obligations of obedience and maintenance with respect to the natural parent; and (3) makes the adoptee the child and legal heir of the adoptive parent having the same rights and privileges, including inheritance, as a natural child of the adoptive parent would have.

The Court of Appeals based its decision on the statement in RCW 26.33.260(1) to the effect that a decree of adoption renders the adoptee the child of the adoptive parents. In doing so, it ignored the general rule set out in *Roderick's Estate, supra*, that an adoptee is, in a legal sense, the child of both the natural and adoptive parent. This rule was required by the verbiage of former Rem. Comp. State. § 1699. It is also required by virtually identical language of RCS 26.33.260(1). While both statutes say and have said that a natural parent loses all rights with regard to an adoptee, neither states the converse—that the adoptee loses all rights with regard to the parent. And while both have stated that the adoptee becomes the child of the adoptive parent, neither says that the relationship with the natural parent is terminated. A Court cannot read language into the statute that the legislature may have omitted, either intentionally or inadvertently. In other words, a Court cannot adopt an interpretation of a statute that adds language that simply isn't there. *Jenkins v. Bellingham*

Municipal Court, 95 Wn.2d 574, 579, 627 P.2d 1316 (1981); *Custody of Smith*, 137 Wn.2d 1, 12, 969 P.2d 21 (1998). The notion that the statutory language serves to end the parent-child relationship between the adoptee and the natural parent is at odds with this rule of statutory interpretation. The general rule set out in *Roderick's Estate*, *supra*, was valid then and is valid now.

In coming to its decision, the Court of Appeals also ignored the decision in *Hale v. Department of Labor and Industries*, *supra*, and the rule set out in that case.

The Court of Appeals dismissed *Roderick's Estate*, *supra*, claiming that it is based on consanguinity and that the Supreme Court has rejected consanguinity as having any effect. The holding in *Roderick's Estate*, *supra*, was not based on vague notions of consanguinity. It rested on an interpretation of former Rem. Comp. § 1699 which did not state that a decree of adoption terminates the relationship between a natural parent and an adoptee; the general rule that an adoptee is the child of both natural and adoptive parents; and the absence of any statute at that time eliminating the adoptee's right to inherit from a natural parent.

To be sure, the holding of *Roderick's Estate*, *supra*, was abrogated by the enactment of RCW 11.04.085 in 1965. That statute eliminated an

adoptee's ability to inherit from a natural parent.³ But this legislation did not undercut the general principles set out in *Roderick's Estate, supra*. It simply provided the statute that decision stated was necessary to eliminate the adoptee's right to inherit.

The Court of Appeals relied on language from *Donnelly's Estate*, 81 Wn.2d 430, 436, 502 P.2d 1163 (1973), to the effect that adoption severs all ties to the past and by giving the adoptee a "fresh start" as the child of the adoptive parent. In that case, the Court interpreted RCW 11.04.085 to preclude an adoptee from inheriting from natural grandparents. It did not mention *Roderick's Estate, supra*, or the rule that an adoptee is a child of both natural and adoptive parents whose rights can only be eliminated by a specific statute. It also did not mention *Hale v. Department of Labor and Industries, supra*. The language in *Donnelly's Estate, supra*, does not abrogate the rules set out in *Roderick's Estate, supra*, and *Hale v. Department of Labor and Industries, supra*. Such *sub silentio* abrogation is disfavored. *Lunsford v. Saberhagen Holdings, Inc.* 166 Wn.2d 264, 280, 208 P.3d 1092 (2009) It is also inappropriate if the decisions can be harmonized. *Industrial Coatings Company v. Fidelity and Deposit Co. of Maryland*, 117 Wn.2d 511, 518-19, 817 P.2d 393

³ The statute says that an adoptee is not an heir of a natural parent. An heir is a person who can take under the laws of intestacy. RCW 11.02.005(6)

(1991). Harmonization is apparent here. As noted above, both *Roderick's Estate, supra*, and *Hale v. Department of Labor and Industries, supra*, acknowledge that a statute can eliminate a benefit that an adoptee would otherwise receive based on the relationship with the natural parent. The Court in *Donnelly's Estate, supra*, was interpreting just such a statute, RCW 11.04.085—the statute that eliminates an adoptee's ability to inherit from a natural parent.

Roderick's Estate, supra, was mentioned in *Estate of Fleming*, 143 Wn.2d 412, 21 P.3d 281 (2001). In that case, the estate of a mother whose parental rights had been terminated through relinquishment sought to inherit from her son who had not been adopted. Citing *Roderick's Estate, supra*, her estate claimed that she was entitled to inherit on the basis of consanguinity.⁴ The Court rejected that argument. It ruled that the termination ended the parent-child relationship and her ability to inherit. In its discussion, the Court stated that consanguinity had been abandoned by “legislative and policy changes that predominate in modern probate law,” specifically the enactment of RCW 11.04.085. 143 Wn.2d at 419 This language shows that *Donnelly's Estate, supra*, and *Estate of Fleming, supra*, must be limited to the probate context. This is appropriate because

⁴ This argument misapprehended the thrust of *Roderick's Estate, supra*.

the language stems from opinions primarily concerned with RCW 11.04.085. They have no effect here. A wrongful death recovery is not part of the decedent's estate and is not based on the ability to inherit. *Wood v. Dunlop*, 83 Wn.2d 719, 521 P.2d 1177 (1974); *Estate of Lee v. City of Spokane*, 101 Wn.App. 158, 2 P.3d 379 (2000) The opinion did not mention *Hale v. Department of Labor and Industries, supra*, or purport to abrogate its rule that an adoptee does not lose benefits based on the relationship with the natural parent.

The decision of the Court of Appeals is also inconsistent Supreme Court decisions setting out other rules for statutory interpretation or construction. In context, the omission of clear language of termination in RCW 26.33.260(1) is significant since the adoption statute must be viewed as a whole and so that no portion is rendered meaningless or superfluous. *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638(2002) Explicit termination and a much broader elimination of rights stems from relinquishment and/or termination. Both the natural parent and the adoptee are divested of all rights, powers, privileges, immunities, duties, and obligations with respect to each other. RCW 26.33.130(2) If the

legislature wanted the same result to follow from adoption without relinquishment or termination, it would have said so.⁵

Furthermore, the legislature is deemed to be aware of decisions construing current and prior legislation. *El Cordoba Dormitories, Inc., v. Franklin Public Utilities District*, 82 Wn.2d 858, 862-63, 514 P.2d 524 (1973) After the decisions in *Roderick's Estate, supra*, and *Hale v. Department of Labor and Industries, supra*, it could have enacted legislation stating that a decree of adoption terminates the parent child relationship. That is the approach taken in the Uniform Adoption Code of 1969 in Section 14, and the 1994 Uniform Adoption Code, Section 1-105. It could have also amended RCW 4.20.020 to exclude adoptees from the definition of "child" contained within that statute. The only change, however, was RCW 11.04.085 which limits the adoptee's right to inherit from the natural parent. This means that the legislature has not seen fit to preclude an adoptee from other benefits flowing from the natural parent.

In essence, the Court of Appeals has ruled that Mr. Saldares cannot be a statutory beneficiary because he cannot inherit. Such a notion cannot stand when the legislative change after the decisions in *Roderick's Estate, supra*, and *Hale v. Department of Labor and Industries, supra*, was

⁵ As will be discussed below, adoption can proceed without termination or relinquishment.

limited to the right to inherit and did not purport to affect the broader notions set out in both cases—that an adoptee does not lose rights stemming from the natural parent without a statute that enumerates the rights that are lost.

Finally, all statutes must be construed to carry out the legislature's intent. *American Continental Insurance Company v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004) The guiding principle for adoption is determining what is in the best interest of the child. RCW 26.33.010 The Court of Appeals stated that this intention is limited to the initial adoption process. Slip Opinion, p. 7 But that limitation is not in the statute itself. The goal of benefiting adoptees includes protecting their rights to benefits stemming from the natural parent.

The Court of Appeals states that allowing an adoptee to be a statutory beneficiary would require the personal representative to search for potential beneficiaries. That argument has previously been rejected by the Supreme Court. The defendant in *Armijo v. Wesselius, supra*, made the same argument in opposing the right of a child born outside of wedlock to be a statutory beneficiary. The Court was not concerned as it stated that the burden was on the person claiming to be a beneficiary to prove the required status. 77 Wn.2d at 720 An adoptee would have the same.

burden. In any event, there is no doubt here that Deborah Reid gave birth to Mr. Saludaes.

The Court of Appeals was also concerned that allowing an adoptee to be a beneficiary would interfere with the privacy of adoption proceedings. If an adoptee chooses to claim beneficiary status, that adoptee has made a decision to subordinate concerns of privacy to establishing a claim. There can be little concern for the privacy of a decedent. In a wrongful death action, all aspects of the decedent's life and relationships become relevant to the establishment of damages.

At the end of the day, the decision of the Court of Appeals conflicts with many decisions of the Supreme Court and Court of Appeals as discussed above. Therefore, the Supreme Court should take review.

IV. There Was No Relinquishment.

The Court of Appeals also decided that the parent-child relationship between Deborah Reid had been terminated by the operation of RCW 26.33.130(2), stating that Deborah Reid relinquished Mr. Saludaes. That ruling is incorrect and conflicts with decisions of both the Supreme Court and the Court of Appeals.

The adoption statute, RCW 26.33, sets out procedures for relinquishment and for adoption. The two are not the same.

A relinquishment proceeding begins with a petition for relinquishment. It must be accompanied by the parent's consent to adoption. RCW 26.33.080(1), (2) Notice of the relinquishment hearing must be given to the natural parent. RCW 26.33.090(2) The Court may, but need not, require the natural parent to appear at the relinquishment hearing. RCW 26.33.090(3) If the relinquishment is approved, custody is awarded to the Department of Social and Health Services, an adoption agency, or a prospective adoptive parent as the petition requests; the agency or person is appointed legal guardian of the relinquished child and is responsible for the child's support; the agency can place the child with a prospective adoptive parent; and the Court then enters an order terminating the parent child relationship. RCW 26.33.130(1); RCW 26.33.090(4), (5) The effect of such an order of termination is different and broader than a decree of adoption as discussed above. Once again, it divests both the parent and the child of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other except for past due child support. RCW 26.33.130(2) The parent whose rights are terminated also ceases to be defined as a child's "parent." RCW 26.33.020(8)

An adoption proceeding also begins with a petition. RCW 26.33.150(1) Consent of the parent is required if the adoptee is under the

age of eighteen. RCW 26.33.160(1)(b) There can be no placement with the prospective adoptive parent until a preplacement report is completed. RCW 26.33.180 A post-placement report is also required. RCW 26.33.200(1) No notice of the hearing need be served on the natural parent if that parent has waived in writing the right to receive the notice. RCW 26.33.240(1) If the Court finds that the consents are valid and that the adoption is in the best interests of the adoptee, it enters a decree of adoption. RCW 26.33.240(3) That decree has the effects stated in RCW 26.33.260(1).

While a petition for adoption can follow an order of termination based on a relinquishment proceeding, there is nothing in the statute that requires relinquishment prior to adoption. Critically, a parent whose rights have been terminated by relinquishment, loses the right to consent to the adoption because he or she is no longer considered a “parent” of the adoptee. A relinquishing natural parent has greater procedural rights than a natural parent consenting to adoption. The relinquishing natural parent must be served with notice of the hearing while no notice need be served on the natural parent consenting to adoption who has waived notice.

There was no relinquishment here. The adoption proceeding was commenced by a petition for adoption filed on behalf of the Saludaresses. (CP 71-74) Such a petition can include a request for relinquishment.

RCW 26.33.030(2) This petition did not seek relinquishment or any subsequent termination of the parent-child relationship between Mr. Saludaes and his natural parents. The petition was accompanied by the Consent to Adoption by Natural Mother signed by Deborah Reid. In it, Ms. Reid acknowledged the legal effects of a decree of adoption. (CP 67-70, discussed at Slip Opinion, p. 11) But she did not acknowledge the effect of a termination of her parental rights or consent to an order of termination. She also waived her right to notice of further proceedings. There is nothing in the record indicating that Ms. Reid was served with notice of any hearing. No order of relinquishment was ever entered. No one was appointed to be Mr. Saludaes' guardian as required by RCW 26.33.090(4) The Decree of Adoption makes no reference to relinquishment or termination of the parental relationship between Mr. Saludaes and his natural parents. (CP 55-56) The order does set out the effect of a decree of adoption by stating the Saludaeses were "constituted a parent of the child to the same degree and effect as if the child had been born as the issue of the marriage existing between Petitioners." (CP 55)

In short, a review of the adoption proceedings shows that an adoption occurred. It also shows that there was no relinquishment and no termination. There was no petition for relinquishment to begin such a proceeding. Ms. Reid's consent cannot be viewed as a relinquishment

because consent to relinquishment and consent to adoption are different. *Dependency of M.D.*, 110Wn.App. 524, 535, 42 P.3d 424 (2002)—discussed in the context of an adoption of an Indian child. That difference is critical in this context. Relinquishment would have deprived Ms. Reid from choosing her mother and stepfather as the adoptive parents. This is so because the termination order would have eliminated her status as a “parent” whose consent was necessary for an adoption. She obviously wanted to ensure that the Saludaresses were the adoptive parents so she could maintain a relationship with her son. Ms. Reid was not served with notice of any hearing as is required. Finally, there is no order appointing anyone to be guardian of the adoptee. Such an appointment is necessary where there is relinquishment and resulting termination. *Marriage of Furrow*, 115 Wn.App. 661, 670, 63 P.3d 821 (2003); *Dependency of M.S.*, 156 Wn.App. 907, 914, 236 P.3d 214 (2010)

In essence, the Court of Appeals has ruled that there can be relinquishment in the absence of a petition for relinquishment; where there is consent to adoption only; when the natural parent was not served with notice of any hearing; when the Decree of Adoption sets out one of statutory effects of a decree of adoption, does not mention termination, and does not also mention any of the statutory effects of termination; and when there is no order appointing a guardian as required by statute. This

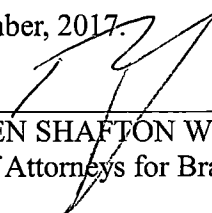
flies in the face of what is required by RCW 26.33. Stated another way, the adoption Court's rulings and procedure were proper in the context of an adoption proceeding only but were clearly not as part of a relinquishment proceeding. For that reason, the Court of Appeals' ruling conflicts with the notion that adoption is a statutory procedure and the propriety of the action taken by the court must be measured by the statutory language. *Adoption of Jackson*, 89 Wn.2d 945, 947, 578 P.2d 33 (1978); *Adoption of Henderson*, 97 Wn.2d 356, 358, 644 P.2d 1178 (1982); *Interest of J.*, 99 Wn.App. 473, 476-77, 994 P.2d 29 (2000)

This analysis shows that this decision of the Court of Appeals conflicts with other decisions of both the Supreme Court and the Court of Appeals. The Supreme Court should take review for that reason.

CONCLUSION

The Supreme Court should take review of this matter. It should then reverse the decision of the Court of Appeals; hold that Mr. Saludaes is a statutory beneficiary of the wrongful death claim; and remand the matter to the Superior Court for proceedings consistent with the decision.

DATED this 25 day of September, 2017.



BEN SHAFTON WSB#6280
Of Attorneys for Brandon Saludaes

APPENDICES

August 8, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Estate of

DEBORAH E. REID,

Deceased.

No. 49222-9-II

PART PUBLISHED OPINION

WORSWICK, J. — Brandon Saludaes is the biological child of Deborah Reid. When he was two years old, he was adopted by Reid’s parents. Reid subsequently had two more children. After Reid died, her estate secured a settlement from her medical providers. Saludaes sought a share of the settlement proceeds as Reid’s child. He now appeals from a superior court order granting Reid’s younger children’s motion for summary judgment and ruling that Saludaes was not Reid’s statutory beneficiary for the purposes of the wrongful death claim.

Saludaes argues that (1) despite his adoption, he remains a child of Reid as contemplated by the wrongful death statute, (2) the adoption decree did not terminate the parent-child relationship between himself and Reid, (3) judicial estoppel operates to make him a statutory beneficiary, and (4) the superior court erred by entering an order approving distribution of the wrongful death settlement proceeds without holding an evidentiary hearing to determine the distribution between beneficiaries.

In the published portion of this opinion, we hold that the right for a child to recover as a statutory beneficiary in a wrongful death claim is extinguished by the child’s adoption. In the unpublished portion of this opinion, we further hold that Reid voluntarily relinquished her parental rights by consenting to Saludaes’s adoption and effectively terminated the parent-child

relationship, and that judicial estoppel does not operate to make Saludaes a statutory beneficiary. Consequently, we affirm the superior court's orders.

FACTS

Reid gave birth to Saludaes in 1982 when she was 17 years old. Two years later, Reid's parents adopted Saludaes, with Reid's consent. Reid later gave birth to two other children—Laurenne and Dillon.¹ In 2008, Reid passed away as a result of an opiate overdose.

Reid's estate filed a wrongful death action in 2011, claiming professional negligence against the providers who prescribed Reid pain medication. The action named Laurenne, Dillon, and Saludaes as potential beneficiaries. The defendants in the action agreed to pay \$850,000 as part of a settlement agreement in 2016. The superior court approved the settlement and ordered that the proceeds be retained in an interest bearing trust account pending proceedings to determine how the proceeds should be divided.

Saludaes, Laurenne, and Dillon filed cross motions for summary judgment on the question of whether Saludaes was eligible to receive a portion of the proceeds. The superior court ruled that Saludaes's adoption terminated his status as Reid's child and, consequently, entered an order granting Dillon and Laurenne's motion and denying Saludaes's. The order stated:

Brandon Saludaes, a child born to Deborah E. Reid, who was adopted by others prior to Deborah E. 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.

Clerk's Papers (CP) at 255. Saludaes appeals.

¹ For the sake of clarity, we refer to Reid's younger children by their first names. We intend no disrespect.

ANALYSIS

STATUTORY ANALYSIS

Saludares argues that his adoption had no effect on his status as Reid's child for purposes of Washington's wrongful death statute, RCW 4.20.020. He contends that "child," as used in RCW 4.20.020, means any biological child of the decedent, and therefore, the superior court erred by ruling that Saludares is not a statutory beneficiary because of his adoption. We disagree.

Statutory interpretation involves questions of law that we review de novo. *In re Estate of Blessing*, 174 Wn.2d 228, 231, 273 P.3d 975 (2012). When engaging in statutory interpretation, we endeavor to determine and give effect to the legislature's intent. *Blessing*, 174 Wn.2d at 231. In determining the legislature's intent, we must first examine the statute's plain language. *Blessing*, 174 Wn.2d at 231. We discern plain meaning from the ordinary meaning of the language at issue, the context of the statute, related provisions, and the statutory scheme as a whole. *Blessing*, 174 Wn.2d at 231.

If a statutory term is undefined, we may look to a dictionary for its ordinary meaning. *Blessing*, 174 Wn.2d at 231. When determining the meaning of undefined terms, courts "will consider the statute as a whole and provide such meaning to the term as is in harmony with other statutory provisions." *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 564, 29 P.3d 709 (2001). "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010) (internal quotation marks omitted) (quoting *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)). We must also "avoid constructions that yield

unlikely, absurd or strained consequences.” *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002).

A. RCW 4.20.020 & Adoption Statutes

RCW 4.20.020, in relevant part, specifies the beneficiaries of a wrongful death action as follows:

Every such action shall be for the benefit of the wife, husband, state registered domestic partner, *child or children*, including stepchildren, of the person whose death shall have been so caused.

(Emphasis added).

Chapter 4.20 RCW does not define “child” or “children.” While the dictionary may inform the plain meaning of a term, focus on the literal language of RCW 4.20.020 and the dictionary definitions² of “child” do not answer the essential question here: whether the legislature intended an adopted child to qualify as a statutory beneficiary of his biological mother for purposes of a wrongful death action.

Consequently, we interpret RCW 4.20.020 in harmony with Washington’s adoption statutes “to achieve a harmonious total statutory scheme . . . which maintains the integrity of the respective statutes.” *State ex rel. Peninsula Neighborhood Ass’n v. Dep’t of Transp.*, 142 Wn.2d 328, 342, 12 P.3d 134 (2000) (alteration in original) (internal quotation marks omitted) (quoting *Employco Personnel Servs., Inc. v. City of Seattle*, 117 Wn.2d 606, 614, 817 P.2d 1373 (1991)).

RCW 26.33.260(1) delineates the effect of an adoption:

² *Black’s Law Dictionary* at 271, defines child as: “A person under the age of majority; At common law, a person who has not reached the age of 14; A boy or girl; a young person; A son or a daughter; A baby or fetus.” (9th ed. 1990). *Webster’s* defines “child” as “a son or daughter: a male or female descendant in the first degree: the immediate progeny of human parents: an adopted child.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY at 388 (2002).

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.

(Emphasis added).

To accept Saldares's interpretation and hold that his adoption had no effect on his status as Reid's child for purposes of the wrongful death claim, we 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." There can be no doubt that the right to recover as a statutory beneficiary in a wrongful death action is a "legal incident." In order to give meaning to all the terms of both statutes and to harmonize RCW 4.20.020 with RCW 26.33.260, we hold that as a result of his adoption, Saldares became the "child, legal heir, and lawful issue" of his adoptive parents and not of his biological mother "for all legal incidents," including wrongful death actions. Such an interpretation is also consistent with Washington's probate statutes. RCW 11.04.085 states, "A lawfully adopted child shall not be considered an 'heir' of his or her natural parents."

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. For example, in *In re Estates of Donnelly*, 81 Wn.2d 430, 502 P.2d 1163 (1972), our Supreme Court examined the intersection of Washington's probate law and Washington's

adoption law in deciding whether an adopted child could inherit from her biological grandfather.

The court held that she could not, emphasizing the legislative objective of finality in adoptions:

The question at bench should, therefore, be decided in the context of the broad legislative objective of giving the adopted child a “fresh start” by treating him as the natural child of the adoptive parent, and severing all ties with the past. We believe it clearly follows that the legislature intended to remove an adopted child from his natural bloodline for purposes of intestate succession.

Donnelly, 81 Wn.2d at 436.

This 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) (concluding, “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).

Saldares offers no compelling argument as to why our Supreme Court’s reasoning in *Donnelly* and its progeny should not similarly apply in this context. Rather, Saldares focuses on a case predating *Donnelly*, *In re Roderick’s Estate*, 158 Wash. 377, 291 P. 325 (1930). In *Roderick*, our Supreme Court held that absent a clear legislative declaration, an adoption does not divest the adoptee from inheriting from his biological parents. 158 Wash. at 381. However, our Supreme Court expressly abrogated the *Roderick* court’s approach in 2001 when it held that a mother who voluntarily relinquished her parental rights to her son could not later inherit from

him. *Fleming*, 143 Wn.2d at 419. The *Fleming* court explicitly departed from *Roderick*, 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.”³ *Fleming*, 143 Wn.2d at 419.

Saludares further argues that any interpretation of RCW 26.33.260 that has the effect of disqualifying him as a statutory beneficiary of the wrongful death claim conflicts with RCW 26.33.010. We disagree.

RCW 26.33.010 states in relevant part that “[t]he guiding principle [of adoption] must be determining what is in the best interest of the child.” Saludares contends that because it would be in his best interest to receive a portion of the wrongful death settlement proceeds, any interpretation of the adoption statutes that does not result in him being a statutory beneficiary for the wrongful death action must be rejected. However, RCW 26.33.010 concerns the policy for the adoption procedures; it does not address the adoption’s effect on future legal actions after the adoption is finalized. Moreover, that the best interest of the child is the guiding principle of our adoption statutes does not mean that adoption has whatever effect an adoptee prefers in any given situation throughout the rest of his life. Rather, as the statute specifically states, “[T]he purpose of adoption is to provide stable homes for children.” RCW 26.33.010. RCW 26.33.260(4) clearly states, “It is the intent of the legislature that this section provide finality for adoptive placements and stable homes for children.”

³ In *Fleming*, the biological mother had surrendered her son to a charitable society to be placed for adoption, but a family never subsequently adopted him. 143 Wn.2d at 415.

We do not depart from the well-established interpretation of RCW 26.33.260(1)—that adoption severs all legal ties between biological parent and child—simply because Saldares contends that in this particular instance it may be in *his* best interest to receive a portion of the wrongful death settlement proceeds. The reality remains that it is in the best interest of adopted children that our adoption statutes be interpreted to give finality for adoptive placements and stable homes for children.

B. *Avoid Absurd Results*

Saldares's statutory interpretation would render him a child of his adoptive parents as well as his biological parents. Such a result would be untenable, and we avoid interpreting a statute such that it leads to absurd or strained consequences.⁴ *Atkinson*, 147 Wn.2d at 21.

Granting an adoptee the right to claim proceeds of his biological parent's wrongful death action would unreasonably expand the category of statutory beneficiaries, thus requiring the personal representative to search for potential beneficiaries. Saldares contends that his interpretation will not burden personal representatives because if no relationship between the decedent and adoptee exists then any failure to notify the adoptee would be harmless. But Saldares's interpretation would not apply only to adoptees who have relationships with their biological parents. It is untenable to expect personal representatives to discern when it is necessary to search for additional potential beneficiaries who have been adopted. Furthermore,

⁴ We note that our holding does not implicate situations in which the spouse of a biological parent becomes an adoptive parent. RCW 26.33.260(1) expressly accounts for such scenarios: "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."

under Saldares's interpretation, children in open adoptions would seemingly have greater legal rights than those in closed adoptions, which is an absurd result.

Saldares argues instead that recovery by an adoptee is consistent with Washington law allowing for contact between adoptees and their biological parents. He contends that such contact can result in the development of a relationship between the biological parent and the adoptee for which the adoptee should be entitled to compensation. However, while the *measure of damages* in a wrongful death suit is the pecuniary loss suffered by the surviving beneficiaries from the death of their relative, recovery is nonetheless expressly limited to the two tiers of beneficiaries identified in RCW 4.20.020. Washington courts have rejected the notion that affinity alone could qualify an individual as a statutory beneficiary.

For example, in *Tait v. Wahl*, 97 Wn. App. 765, 770, 987 P.2d 127 (1999), we held that although Tait had a "parent-child like" relationship with the decedent, her children had "familial" relationships with the decedent, and Tait and her children were financially dependent upon the decedent, they were not beneficiaries under RCW 4.20.020 and accordingly could not recover damages under Washington's wrongful death statute. Whether or not Saldares maintained a close relationship with Reid until her death⁵ does not change the fact that his adoption had the effect of terminating his status as a statutory beneficiary under RCW 4.20.020.

Additionally, his interpretation would call into question the finality and privacy of many adoptions. If, despite the clear language of RCW 26.33.260, an adoptee remains a child of his biological parent in most contexts, the finality of adoption and the stability of the adopted home

⁵ Laurene and Dillon contest Saldares's characterization of his relationship with Reid as close.

would be undermined. A biological child could argue that she is entitled to the rights and privileges typical of legal children in a variety of contexts (i.e., health insurance), unless the legislature specifically states otherwise.

In conclusion, we hold that Saludaes is not a “child” of Reid for purposes of RCW 4.20.020 as a result of his adoption,⁶ and we affirm the superior court’s order.

A majority of the panel having determined that only the foregoing portion of this opinion will be printed in the Washington Appellate Reports and that the remainder shall be filed for public record in accordance with RCW 2.06.040, it is so ordered.

ADDITIONAL ANALYSIS

THE ADOPTION DECREE EFFECTIVELY TERMINATED THE PARENT-CHILD RELATIONSHIP

Saludaes argues that his adoption decree did not terminate the parent-child relationship between him and Reid because there was no previous petition for relinquishment or termination. However, the adoption record makes it clear that Reid voluntarily relinquished her parental rights by consenting to the adoption, and the adoption decree is an appropriate order terminating the parent-child relationship between Saludaes and Reid.

RCW 26.33.130(1) states, “If the court determines, after a hearing, that the parent-child relationship should be terminated pursuant to RCW 26.33.090 . . . the court shall enter an appropriate order terminating the parent-child relationship.”

⁶ Other states that have considered whether children adopted by others prior to a decedent’s death qualify as “children” in wrongful death actions have concluded that they do not. See *Phraner v. Cote Mart, Inc.*, 55 Cal. App. 4th 166, 63 Cal. Rptr. 2d 740 (1997); *Matter of Estate of Renaud*, 202 Mich. App. 588, 509 N.W.2d 858 (1993); *Johnson v. Parrish*, 159 Ga. App. 613, 284 S.E.2d 111 (1981); *Wasley v. Brown*, 193 F.Supp. 55 (E.D. Va. 1961).

RCW 26.33.090 outlines the process for the relinquishment of one's parental rights. The statute requires that the court hold a hearing to determine that any written consent has been validly executed and whether it is in the best interests of the child to terminate the parent-child relationship. If the court so finds, it awards custody of the child to the prospective adoptive parents and enters an order terminating the parent-child relationship. RCW 26.33.090.

As part of the adoption proceedings, Reid filed an affidavit of consent to the adoption, stating in relevant part:

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 parent or parents permanently of her or their parental rights in respect to the adopted child.*

... This consent is executed subject to the approval of the Superior Court of the State of Washington for Clark County, and to have no effect until so approved that after this consent is approved by the Court and the Order of Relinquishment is issued and filed and the child relinquished to the Co-Petitioners.

Confidential CP at 68-69 (emphasis added).

The superior court subsequently entered findings of fact and conclusions of law wherein the court found that Reid "had previously signed a surrender and release whereby consent was given," and concluded that "to all legal intents and purposes [Saldares] should be the child of Petitioners." Confidential CP at 57-58. The decree of adoption entered by the superior court expressly approved Reid's written consent and granted the adoption.

Saldares contends that Reid's consent did not amount to a relinquishment, despite the consent's clear language, because no separate petition for relinquishment was filed, and no separate order of relinquishment or order terminating Reid's potential right was entered.

However, separate petitions and orders are not required by statute. Rather, RCW 26.33.030(2)

expressly allows that “[a] petition under this chapter may be consolidated with any other petition under this chapter. A hearing under this chapter may be consolidated with any other hearing under this chapter.”

Reid’s consent to adoption clearly states that she authorized and consented to Saludares’s adoption, she understood that a decree of adoption would terminate her parental rights, and that her consent would not be valid until the superior court approved it. The superior court subsequently held the requisite hearing in which it determined Reid’s consent and relinquishment was validly executed and should be granted, gave custody to the adoptive parents, and ordered that Saludares become the child of the adoptive parents. This process complied with the procedure set forth in RCW 26.33.090 and the decree of adoption served as an “appropriate order” under RCW 26.33.130. The adoption made Saludares a child of his adoptive parents and severed his legal relationship with Reid; the adoption decree effectively terminated the parent-child relationship between Reid and Saludares.

JUDICIAL ESTOPPEL

Saludares also argues that because the petition for letters of administration listed him as Reid’s son and he was notified of the pendency of probate proceedings, the doctrine of judicial estoppel compels his status as a statutory beneficiary. We disagree.

“Judicial estoppel is an equitable doctrine that precludes a party from asserting one position in a court proceeding and later seeking an advantage by taking a clearly inconsistent position.” *Anfinson v. FedEx Ground*, 174 Wn.2d 851, 861, 281 P.3d 289 (2012) (internal quotation marks omitted) (quoting *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538, 160 P.3d 13 (2007)). The two guiding principles that justify the application of judicial estoppel are

“preservation of respect for judicial proceedings” and “avoidance of inconsistency, duplicity, and waste of time.” *Anfinson*, 174 Wn.2d at 861.

“Three core factors” determine whether judicial estoppel applies:

(1) whether ‘a party’s later position’ is ‘clearly inconsistent with its earlier position’; (2) whether ‘judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled’; and (3) ‘whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.’

Arkison, 160 Wn.2d at 538-39 (internal quotation marks omitted) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 121 S. Ct. 1808, 149 L. Ed. 2d 968, 973 (2001)).

Here, none of the “three core factors” apply. Saludaes argues that listing him as Reid’s son on the letters of administration is “clearly inconsistent” with Laurene’s later argument that he is not a statutory beneficiary. Laurene was required to name all of Reid’s potential heirs in her petition for letters of administration and to subsequently give notice to those heirs. RCW 11.28.110, .237(1). Including Saludaes as a potential heir did not amount to an assertion that Saludaes was a statutory beneficiary for purposes of the wrongful death claim. Saludaes’s status as a statutory beneficiary likely remained uncertain to Laurene at the time of her petition. To hold that Laurene’s statement amounts to an inconsistent statement for the purposes of judicial estoppel would send the message that Laurene should have risked failing to list and provide notice to all potential heirs rather than risk listing a potential heir who was later discovered to not be a beneficiary.

Moreover, Laurene’s “inconsistent statement” did not create the perception that Laurene misled the court in order to gain an unfair advantage over Saludaes. Saludaes contends that the petition for letters of administration allowed Laurene to be appointed as the

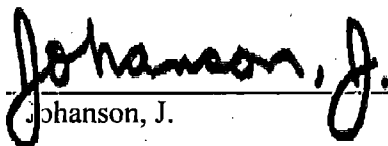
estate's personal representative, which benefited Laurene by allowing her to file the wrongful death action. However, nothing about Laurene's appointment as personal representative gave her an *unfair advantage* over Saldares. Consequently, we hold that Saldares's argument based on judicial estoppel fails.

DISTRIBUTION METHOD

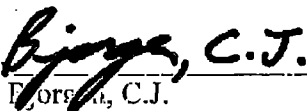
The superior court entered an order approving the distribution method for the wrongful death settlement proceeds, authorizing the distribution of two-thirds of the proceeds to Dillon and Laurene and reserving the remaining third as security for Saldares pending our decision. Saldares argues that the superior court erred by entering an order approving distribution of the wrongful death settlement proceeds without holding an evidentiary hearing to determine the distribution between beneficiaries. Because we hold that Saldares is not a statutory beneficiary entitled to proceeds of the wrongful death action, we do not address his argument.

Affirmed.

We concur:



Johanson, J.



Bjorge, C.J.



Worswick, J.

August 30, 2017.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Estate of

DEBORAH E. REID,

Deceased.

No. 49222-9-II

**ORDER DENYING MOTION
TO PUBLISH**

Appellant moves to publish a portion of the unpublished section of this court's opinion filed on August 8, 2017, in the above-entitled matter. Following consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Worswick, Johanson, Bjorgen

FOR THE COURT:


JUDGE

APPENDIX OF STATUTES

Note: The adoption that is the subject of this lawsuit occurred in 1985 and was based on RCW 26.33 as it then existed and as had been recently enacted in 1984 Laws of Washington, Chapter 155. There have been amendments to RCW 26.33 since that time. This Appendix will set out a number of statutes in RCW 26.33 as they currently exist. Material that has been inserted since the 1984 enactment will be shown in italics.

Former Rem. Comp. Stat. § 1699

By such order the natural parents shall be divested of all legal rights and obligations in respect to such child, and the child shall be free from all legal obligations of obedience and maintenance in respect to them, and shall be, to all intents and purposes, the child and legal heir of his or her adopter or adopters, entitled to all rights and privileges and subject to all the obligations of a child of the adopter or adopters begotten in lawful wedlock: Provided, that on the decease of parents who have adopted a child or children under this chapter and the subsequent decease of such child or children without issue, the property of such adopting parents shall descend to their next of kin, and not to the next of kin of such adopted child or children.

RCW 4.20.020

Every such action shall be for the benefit of the wife, husband, state registered domestic partner, child or children, including stepchildren, of the person whose death shall have been so caused. If there be no wife, husband, state registered domestic partner, or such child or children, such action may be maintained for the

benefit of the parents, sisters, or brothers, who may be dependent upon the deceased person for support, and who are resident within the United States at the time of his or her death.

In every such action the jury may give such damages as, under all circumstances of the case, may to them seem just.

RCW 11.02.005(6)

“Heirs” denotes those persons, including the surviving spouse or surviving domestic partner, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent’s death intestate.

RCW 11.04.085

A lawfully adopted child shall not be considered an “heir” of his or her natural parents for the purposes of this title.

RCW 26.33.010

The legislature finds that the purpose of adoption is to provide stable homes for children. Adoptions should be handled efficiently, but the rights of all parties must be protected. The guiding principle must be determining what is in the best interest of the child. It is the intent of the legislature that this chapter be used only as a means for placing children in adoptive homes and not as a means for parents to avoid responsibility for their children unless the department, an agency, or a prospective adoptive parent is willing to assume the responsibility for the child.

RCW 26.33.020(8)

“Parent” means the natural or adoptive mother or father of a child, including a presumed father under chapter 26.26 RCW. It does not

include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.

RCW 26.33.030(2)

A petition under this chapter may be consolidated with any other petition under this chapter. A hearing under this chapter may be consolidated with any other hearing under this chapter.

RCW 26.33.080(1), (2)

(1) A parent, *an alleged father*, the department, or an agency may file with the court a petition to relinquish a child to the department or an agency. The parent's or *alleged father's* written consent to adoption shall accompany the petition. The written consent of the department or the agency to assume custody shall be filed with the petition.

(2) A parent or prospective adoptive parent may file with the court a petition to relinquish a child to the prospective adoptive parent. The parent's written consent to adoption shall accompany the petition. The written consent of the prospective adoptive parent to assume custody shall be filed with the petition. The identity of the prospective adoptive parent to assume custody shall be filed with the petition.

RCW 26.33.090(2), (3), (4)

(2) Notice of the hearing shall be served on any *relinquishing* parent, any alleged father, and the department, agency, or prospective adoptive parent in the manner prescribed by RCW 26.33.310. *If the child is an Indian child, notice of the hearing shall also be served on the child's tribe in the manner prescribed by RCW 26.33.310.*

(3) The court may require the parent to appear personally and enter his or her consent to adoption on the record. *However, if the child is an Indian child, the court shall require the consenting*

parent to appear personally before a court of competent jurisdiction to enter on the record his or her consent to the relinquishment or adoption. The court shall determine that any written consent has been validly executed, and if the child is an Indian child, such court shall further certify that the requirements of 25 U.S.C. Sec. 1913(a) have been satisfied. If the court determines it is in the best interests of the child, the court shall approve the petition for relinquishment.

(4) If the court approves the petition, it shall award custody of the child to the department, agency, or prospective adoptive parent, who shall be appointed legal guardian. The legal guardian shall be financially responsible for support of the child until further order of the court. The court shall also enter an order pursuant to RCW 26.33.130 of this act terminating the parent-child relationship of the parent and the child.

RCW 26.33.130(1), (2)

(1) If the court determines, after a hearing, that the parent-child relationship should be terminated pursuant to RCW 26.33.090 or RCW 26.33.120, the court shall enter an appropriate order terminating the parent-child relationship.

(2) An order terminating the parent-child relationship divests the parent and the child of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other except past-due child support obligations owed by the parent.

RCW 26.33.150(1)

An adoption proceeding is initiated by filing with the court a petition for adoption. The petition shall be filed by the prospective adoptive parent.

RCW 26.33.160(1)

Except as otherwise provided in RCW 26.33.170, consent to an adoption shall be required of the following if applicable:

- (a) The adoptee, if fourteen years of age or older;
- (b) The parents and any alleged father of an adoptee under eighteen years of age;
- (c) An agency or the department to whom the adoptee has been relinquished pursuant to RCW 26.33.080; and
- (d) The legal guardian of the adoptee.

RCW 26.33.180

Except as provided in RCW 26.33.220, a child shall not be placed with prospective adoptive parents until a preplacement report has been filed with the court.

RCW 26.33.200(1)

Except as provided in RCW 26.33.220, at the time the petition for adoption is filed, the court shall order a post-placement report made to determine the nature and adequacy of the placement and to determine if the placement is in the best interest of the child. The report shall be prepared by an agency, the department, an individual approved by the court, or a qualified salaried court employee appointed by the court. *A certificate signed under penalty of perjury by the person preparing the report specifying his or her qualifications as required in this chapter shall be attached to or filed with each post-placement report.* The report shall be in writing and contain all reasonably available information concerning the physical and mental condition of the child, home environment, family life, health, facilities and resources of the petitioners, and any other facts and circumstances relating to the propriety and advisability of the adoption. The report shall also include, if relevant, information on the child's special cultural heritage, including membership in any Indian tribe or band. The report shall be filed within sixty days of the date of appointment, unless the time is extended by the court. The preplacement report

shall be made available to the person appointed to make the post-placement report.

RCW 26.33.240(1), (3)

(1) After the reports required by RCW 26.33.190 and RCW 26.33.200 have been filed, the court shall schedule a hearing on the petition for adoption upon request of the petitioner for adoption. Notice of the date, time, and place of hearing shall be given to the petitioner and any person or agency whose consent to adoption is required under RCW 26.33.160, unless the person or agency has waived in writing the right to receive notice of the hearing. *If the child is an Indian child, notice shall also be given to the child's tribe.* Notice shall be given in the manner prescribed by RCW 26.33.310.

(3) If the court determines, after review of the petition, preplacement and post-placement reports, and other evidence introduced at the hearing, that all necessary consents to adoption are valid or have been dispensed with pursuant to RCW 26.33.170 and that the adoption is in the best interest of the adoptee, *and, in the case of an adoption of an Indian child, that the adoptive parents are within the placement preferences of RCW 13.38.180 or good cause to the contrary has been shown on the record,* the court shall enter a decree of adoption pursuant to RCW 26.33.250.

RCW 26.33.260(1)

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.

APPENDIX OF UNIFORM LAWS

Uniform Adoption Act of 1969, Section 14(a)

(a) A final decree of adoption and an interlocutory decree of adoption which has become final, whether issued by a Court of this state or of any other place, have the following effect as to matters within the jurisdiction or before a court of this state:

(1) except with respect to a spouse of the petitioner and relatives of the spouse, to relieve the natural parents of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual and his relatives, including his natural parents, so that the adopted individual thereafter is a stranger to his former relatives for all purposes including inheritance and the interpretation or construction of documents, statutes, and instruments, whether executed before or after the adoption is decreed, which do not expressly include the individual by name or by some designation not based on a parent and child or blood relationship;

(2) to create the relationship of parent and child between petitioner and the adopted individual, as if the adopted individual were a legitimate blood descendant of the petitioner, for all purposes including inheritance and applicability of statutes, documents, and instruments, whether executed before or after the adoption is decreed, which do not expressly exclude an adopted individual from their operation or effect.

1994 Uniform Adoption Act, Section 1-105(a)

Except as otherwise provided in Section 4-102, after a decree of adoption becomes final:

- (a) the legal relationship of parent and child between each of the adoptee's former parents and the adoptee terminates, except for a former parent's duty to pay arrearages for child support; and
- (b) any previous court order for visitation or communication with an adoptee terminates.

FILED
COURT OF APPEALS
DIVISION II

2017 SEP 26 AM 9:52

NO. 49222-9-II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
BY DM
DEPUTY

In re the Matter of the Estate of

DEBORAH E. REID,

Deceased.

APPEAL FROM THE SUPERIOR COURT

HONORABLE SUZAN CLARK

DECLARATION OF ELECTRONIC TRANSMISSION

BEN SHAFTON
Attorney for Appellant Brandon Saldares
Caron, Colven, Robison & Shafton
900 Washington Street, Suite 1000
Vancouver, WA 98660
(360) 699-3001

COMES NOW Ben Shafton and declares as follows under penalty of perjury under the laws of the State of Washington:

1. My name is Ben Shafton. I am a citizen of the United States, over the age of eighteen (18) years, a resident of the State of Washington, and am not a party to this action.

2. On August 22, 2017, I sent the Petition for Review and this declaration by e-mail to the following person(s):

Kathleen McCann—kathy @kmccannlaw.com

William Garr—weg@buckley-law.com

Michael Higgins—mike_higgins@marsh-higgins.com

DATED at Vancouver, Washington, this 25 day of September, 2017.



BEN SHAFTON WSB#6280

CARON, COLVEN, ROBISON
& SHAFTON, P.S.

Attorneys at Law
900 Washington Street, Suite 1000
Vancouver, Washington 98660

Ben Shafton
bshafton@ccrslaw.com

Local Phone (360) 699-3001
Portland (503) 222-0275
Facsimile (360) 699-3012

www.ccrslaw.com

Licensed in Washington & Oregon

VIA FEDERAL EXPRESS

September 25, 2017

Derek Byrne
Clerk of the Court
Court of Appeals, Division Two
950 Broadway, Suite 300
MS-TB-06
Tacoma, WA 98402-4454

Re: *Estate of Reid*, No. 49222-9-II

Dear Mr. Byrne:

Please find enclosed for filing the Petition for Review, the Declaration of Electronic Transmission, and our check for \$200.00 for the filing fee.

Thank you for your attention to this matter.

Very truly yours,


Ben Shafton
Enclosures

BTA

Cc: Client
Kathleen McCann
William Gaar
Michael Higgins

RECEIVED
SEP 26 2017
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON