

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

In re the Matter of the Estate of

DEBORAH E. REID,

Deceased.

APPEAL FROM THE SUPERIOR COURT

HONORABLE SUZAN CLARK

BRIEF OF APPELLANT

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

**FILED
COURT OF APPEALS
DIVISION II**
2016 SEP 16 AM 9:23
STATE OF WASHINGTON
BY  DEPUTY

Table of Contents

Introduction.....1

Assignments of Error.....1

Issues Presented.....2

Statement of the Case.....2

Argument.....7

Assignment of Error No. 1.....7

 I. Standard of Review.....7

 II. Applicable Rules for Statutory Interpretation.....8

 III. As a Natural Child of the Decedent, Brandon Is a Statutory Beneficiary.....9

 IV. The Adoption Did Not Terminate the Parent-Child Relationship between Brandon and the Decedent.....11

 a. Introduction.....11

 b. A Decree of Adoption Does Not Terminate the Parent-Child Relationship between the Natural Parent and the Adoptee.....11

 c. The Parent-Child Relationship Was Not “Terminated” by the Operation of RCW 26.33.130(2).....20

 d. The Effect of the Adoption Decree Cannot Be Changed by the Language of the Order.....26

 e. Any Other Interpretation of the Adoption Statutes Is at Odds with RCW 26.33.010.....27

f.	Decisions from Other Jurisdictions Are Not Helpful Because They Are Based on Different Statutes.....	29
g.	Recovery by an Adoptee Is Consistent with Washington Statutes Allowing for Contact between Adoptees and Natural Parents.....	32
h.	Affording Adoptees the Status of Statutory Beneficiaries Will Not Result in Fraud or Double Recovery.....	33
i.	The Doctrine of Judicial Estoppel Requires That Brandon Be a Statutory Beneficiary.....	35
j.	Conclusion.....	36
	Assignment of Error No. 2.....	37
I.	Introduction.....	37
II.	Standard of Review.....	37
III.	The Settlement Proceeds Must Be Divided Among the Statutory Beneficiaries in Amounts to Be Determined...	38
	Conclusion.....	40
	Appendix.....	42

Table of Authorities

Cases:

<i>Adoption of Baby Boy C.</i> , 31 Wn.App. 639, 644 P.2d 150 (1982).....	8
<i>American Continental Insurance Company v. Steen</i> , 151 Wn.2d 512, 91 P.3d 864 (2004).....	8
<i>Arkison v. Ethan Allen, Inc.</i> , 160 Wn.2d 535, 160 P.3d 113 (2007).....	35
<i>Armijo v. Wesselius</i> , 73 Wn.2d 716, 440 P.2d 471 (1968).....	10, 33, 34
<i>Atchsion v. Great Western Malting</i> , 161 Wn.2d 372, 166 P.3d 662 (2007).....	8
<i>Avery v. Department of Social and Health Services</i> , 150 Wn.2d 409, 78 P.3d 634 (2003).....	28
<i>Bowers v. Fibreboard</i> , 66 Wn.App. 454, 832 P.2d 523 (1992).....	32
<i>Burton v. Twij Commander Aircraft, LLC</i> , 171 Wn.2d 204, 212, 254 P.3d 778 (2011).....	7
<i>Calhoun v. State</i> , 146 Wn.App. 977, 985, 193 P.3d 188 (2008).....	7
<i>City of Puyallup v. Hogan</i> , 168 Wn.App. 406, 277 P.3d 49 (2012).....	38
<i>Cormier v. Williams/Sedco/Horn Constructors</i> , 460 F.Supp. 1010 (E.D. La. 1978).....	30, 33
<i>Cornejo v. State</i> , 57 Wn.App. 314, 788 P.2d 554 (1990).....	33
<i>Cunningham v. Reliable Plumbing, Inc.</i> , 126 Wn.App. 222, 108 P.3d 147 (2005).....	35
<i>Custody of Smith</i> , 137 Wn.2d 1, 969 P.2d 21 (1998).....	9
<i>Dependency of M.S.</i> , 156 Wn.App. 907, 236 P.3d 214 (2010).....	9

<i>Eig v. Savage</i> , 177 Ga.App. 514, 336 S.E.2d 752 (1986).....	30
<i>El Cordoba Dormitories, Inc., v. Franklin County Public Utilities District</i> , 82 Wn.2d 858, 514 P.2d 524 (1973).....	9
<i>Estate of Blessing</i> , 174 Wn.2d 228, 273 P.3d 975 (2012).....	9, 34
<i>Estate of Haselwood v. Bremerton Ice Arena, Inc.</i> , 166 Wn.2d 489, 210 P.3d 308 (2009).....	8
<i>Estate of Lee v. City of Spokane</i> , 101 Wn.App. 158, 2 P.3d 979 (2000).....	32
<i>Estate of Renaud</i> , 202 Mich.App. 588, 509 N.W.2d 858 (1993).....	31
<i>Grant County Prosecuting Attorney v. Jasman</i> , 183 Wn.2d 633, 354 P.3d 846 (2015).....	8
<i>Hale v. Department of Labor and Industries</i> , 20 Wn.2d 14, 145 P.2d 285 (1944).....	14, 15, 16, 18, 19, 20
<i>Hanson v. Hanson</i> , 55 Wn.2d 884, 350 P.2d 859 (1960).....	26, 27
<i>In re Adoption of T.A.W.</i> , 188 Wn.App. 799, 354 P.3d 46, (2015).....	9
<i>In re Clark</i> , 24 Wn.2d 105, 163 P.2d 577 (1945).....	26
<i>James v. Robeck</i> , 79 Wn.2d 864, 490 P.2d 878 (1971).....	37
<i>Johnson v. Parrish</i> , 159 Ga.App. 613, 284 S.E. 2d 111 (1993).....	29
<i>Johnson v. Si-Cor, Inc.</i> , 107 Wn.App. 902, 28 P.3d 832 (2001).....	35
<i>Kilian v. Atkinson</i> , 147 Wn.2d 16, 50 P.3d 638 (2002).....	8
<i>Kleven v. City of Des Moines</i> , 111 Wn.App. 284, 44 P.3d 887 (2002).....	9
<i>Maehren v. Seattle</i> , 92 Wn.2d 480, 599 P.2d 1255 (1979).....	38

<i>Moeller v. Farmers Insurance Company of Washington</i> , 155 Wn.App. 133, 229 P.3d 857 (2010).....	7
<i>Moody v. United States</i> , 112 Wn.2d 690, 773 P.2d 67 (1989).....	38
<i>Parrish v. Jones</i> , 44 Wn.App. 449, 722 P.2d 878 (1986).....	39
<i>Phraner v. Cote Mart, Inc.</i> , 55 Cal.App.4 th 166, 63 Cal. Rptr.2d 740 (1997).....	29
<i>Roderick's Estate</i> , 158 Wash. 377, 291 P. 325 (1930).....	1, 13, 14, 15, 16, 18, 19
<i>Sofie v. Fibreboard, Corp.</i> , 112 Wn.2d 636, 771 P.2d 711 (1989).....	38
<i>State v. Superior Court</i> , 115 Wash. 154, 196 P. 577 (1921).....	26
<i>Tait v. Wahl</i> , 97 Wn.App. 765, 770, 987 P.2d 127 (1999).....	10
<i>Webb v. Harvell</i> , 563 F.Supp. 172 (W.D. Ark. 1983).....	30
<i>Wood v. Dunlop</i> , 83 Wn.App. 719, 521 P.2d 1177 (1974).....	31

Washington Statutes:

RCW 4.20.....	8, 10, 15, 19
RCW 4.20.010.....	36, 42
RCW 4.20.020.....	9, 25, 26, 31, 33, 34, 36, 42
RCW 4.20.060.....	39
RCW 4.56.250(1)(b).....	37, 43
RCW 11.02.005(6).....	18
RCW 11.04.015(2)(a).....	31, 44

RCW 11.04.015 (2)(d), (e).....	31, 44
RCW 11.04.085.....	18
RCW 11.12.091.....	13, 45
RCW 11.04.095.....	31, 45
RCW 11.28.110.....	35, 46
RCW 11.28.237(1).....	35, 47
RCW 26.33.....	8, 11, 12, 16
RCW 26.33.010.....	27, 28
RCW 26.33.130(2).....	20, 22, 25
RCW 26.33.150(1).....	22, 47
RCW 26.33.160(1)(b).....	22, 47
RCW 26.33.260.....	16
RCW 26.33.260(1).....	12, 14, 15, 16, 19, 26, 30
RW 26.33.260(2) – (4).....	16, 48
RCW 26.33.343.....	32, 48
RCW 26.33.345.....	32, 51
RCW 26.33.347.....	32, 54
RCW 51.08.030.....	18, 19

Washington Session Laws

1943 Laws of Washington, Chapter 268, Section 12.....16, 56

1955 Laws of Washington, Chapter 291, Section 14.....16, 56

1984 Laws of Washington, Chapter 155.....8, 11, 12, 16

1984 Laws of Washington, Chapter 155, Section 2(6).....21, 57

1984 Laws of Washington, Chapter 155, Section 2(7).....21, 57

1984 Laws of Washington, Chapter 155, Section 2(8).....21, 57

1984 Laws of Washington, Chapter 155, Section 8.....21, 57

1984 Laws of Washington, Chapter 155 Section 9(1), (2)....21, 58

1984 Laws of Washington, Chapter 155, Section 9(3).....21, 58

1984 Laws of Washington, Chapter 155, Section 9(4).....21, 58

1984 Laws of Washington, Chapter 155, Section 10(1).....21, 58

1984 Laws of Washington, Chapter 155, Section 12(1).....22, 59

1984 Laws of Washington, Chapter 155, Section 13(1).....22

1984 Laws of Washington, Chapter 155, Section 23(3).....23, 59

1984 Laws of Washington, Chapter 155, Section 41.....11

1995 Laws of Washington, Chapter 270, Section 7.....16

Statutes from States Other Than Washington:

A.C.A. § 9-9-215(a)(1) (Arkansas).....30, 60

California Probate Code § 6451(a).....	17, 30, 62
HRS 578-16(B) (Hawaii).....	17, 64
LSA-CC Art. 214 (Louisiana).....	30
OCGA § 19-8-19 (Georgia).....	30, 63
NCGSA 48-1-106(2) (North Carolina).....	17, 66
Wis. Stat. § 48.92(2) (Wisconsin).....	17, 67

Other Authority:

Uniform Adoption Code of 1969 (revised 1971), Section 14, 9 U.L.A. Part 1, p. 198.....	16
1994 Uniform Adoption Act, Section 1-105, 9 U.L.A. Part 1, p. 23.....	17

INTRODUCTION

In *Roderick's Estate*, 158 Wash. 377, 291 P. 325 (1930), the Court stated that an adoption decree does not terminate the parent-child relationship between the adopted child and the natural parent. That rule has not been abrogated by a subsequent legislative enactment or overruled by a later Court decision. For that reason, Brandon Saludaes remains a child of Deborah Reid even though he was adopted by Ms. Reid's mother and stepfather when she was nineteen years of age and he was two years old. Mr. Saludaes is therefore a beneficiary of the wrongful death action filed in connection with Ms. Reid's passing and is entitled to share in the proceeds of the settlement of the wrongful death claim. The trial court erred by ruling to the contrary.

ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The trial court erred by entering the Order on Motions.

ASSIGNMENT OF ERROR NO. 2: The trial court erred by entering the Order Approving Distribution Method for Wrongful Death Settlement Proceeds.

ISSUES PRESENTED

Issue No. 1: Is Mr. Saludaes a beneficiary of the wrongful death action at issue here notwithstanding his adoption by Ms. Reid's mother and stepfather?

Issue No. 2: Should the proceeds of the wrongful death settlement have been disbursed without a determination of the value of the each claim and the value of the pecuniary loss suffered by each of Ms. Reid's children?

STATEMENT OF THE CASE

Deborah Reid (the Decedent) was born on April 21, 1965. (CP 85) On August 19, 1982, when she was seventeen years of age, she gave birth to Brandon Reid (Brandon)¹. Charles Graves is Brandon's natural father. (CP 65-67, 71)

Diane Saludaes, now deceased, is the Decedent's mother. On January 24, 1985, she and her then husband Michael Saludaes, filed a petition to adopt Brandon. (CP 71-74) The adoption was allowed, and a Decree of Adoption was entered on March 18, 1985. Brandon has been known as Brandon Saludaes since that time.² (CP 55-56)

¹ Ms. Reid's children will be referred to by their first names to avoid confusion. This convention was followed in the trial court.

² The nuances of the adoption proceeding will be discussed in the Argument section of this brief.

The relationship between Brandon and the Decedent continued after the adoption. She was at his childhood birthday parties. She interacted with him on his first day of kindergarten. He spent time with her at her apartment while he was in grade school. He missed her when she moved to California for a time and was in telephone contact. She attended his musical performances when he was in high school. She was at his high school graduation. When he went into the military, she was among those who saw him off at the airport. He maintained contact with her while he was in the service although that was difficult when he was deployed to Saudi Arabia and Iraq. (CP 183-85) The continuing relationship is not surprising given the fact that Brandon was adopted by the Decedent's mother and her husband.

The Decedent subsequently gave birth to two other children. These are Laurene Reid (Laurenne), born March 23, 1991, and Dillon Reid-Troxel (Dillon), born March 7, 1999. (CP 76)

Dillon and Laurenne were the subject of dependency proceedings commenced in 2006. Brandon attended hearings and provided information to the social worker dealing with the case. He represented himself to be and was described in pleadings as the brother of his two siblings. (CP 76-80, 90, 97)

The Decedent died on January 8, 2008, as a result of an overdose of opiates. After that, Brandon filed for and obtained custody of Laurene. (CP 110, 120-25, 169-78)

The Decedent was not married at the time of her death. Therefore, and on June 8, 2010, Laurene petitioned for letters of administration. She sought to be appointed personal representative for the sole purpose of pursuing a wrongful death claim against the persons responsible for the Decedent's death. Her petition showed that the Decedent died intestate and had no assets at the time of her death. It also named all three of her children—Brandon included—as her heirs and children. (CP 1-3) Laurene was appointed personal representative. (CP 4-5) The required notice of probate proceedings was sent to Brandon as well as his siblings. (CP 6-7)

The wrongful death action was filed as *Estate of Reid, et al v. Payette Clinics, et al*, Clark County Superior Court No. 11-2-00114-1 (the Wrongful Death Action) was filed on January 7, 2011. It claimed professional negligence against the providers that prescribed pain medication for the Decedent. (CP 17) Laurene was deposed during the course of the litigation. During her questioning, she referred to Brandon as her brother. (CP 181)

The Wrongful Death Action was settled in 2016. The defendants agreed to pay \$850,000.00 as a lump sum. No portion of the settlement proceeds were earmarked for any particular beneficiary. (CP 10, 18) The wrongful death claim had no component for loss of future wages by the Decedent or monetary contributions she would have been expected to make to the beneficiaries. (CP 25) The trial court approved the settlement and allowed requested fees and costs to the attorneys who had prosecuted the Wrongful Death Action and to the attorneys who had represented the estate. It ordered that the proceeds be retained in an interest bearing trust account pending proceedings to determine how those proceeds would be divided. The order noted that Laurene and Dillon asserted that Brandon should not share in the proceeds because of his adoption. (CP 29-30)

The parties then filed competing summary judgment motions to determine Brandon's status. (CP 34-45, 126-38, 187) On July 29, 2016, the trial court entered the Order on Motions. It granted the motions made on behalf of Laurene and Dillon and denied Brandon's motion. It effectively ruled that Brandon was not a beneficiary of the Decedent for the purposes of the wrongful death claim and therefore not eligible to receive any of the wrongful death proceeds. (CP 253-55)

On August 1, 2016, Brandon filed his Notice of Appeal. (CP 256-60) He also moved the Court of Appeals for a stay of any distribution of

the wrongful death proceeds held in the aforementioned interest bearing trust account. On August 5, 2016, the trial court entered the Order Approving Distribution Method for Wrongful Death Settlement Proceeds. As is relevant here, it allowed Laurene and Dillon each to receive one-third of the amount in the trust account and ordered that the last third be held pending a ruling from the Court of Appeals. (CP 263-66) The order was not preceded by any factual hearing to segregate amounts attributable to each claim or to determine the extent of the loss or damages suffered by any of the Decedent's children.

On August 8, 2016, Commissioner Bearse ruled that Laurene and Dillon could each receive one-third of the net proceeds but that the remainder would continue to be held in the interest bearing account pending the resolution of the appeal. The order also allowed Brandon to file an amended notice of appeal to indicate that he was appealing from both the Order on Motions and the Order Approving Distribution Method for Wrongful Death Settlement Proceeds. No party has sought modification of that ruling.

Brandon filed the Amended Notice of Appeal on August 9, 2016.
(CP 267-74)

ARGUMENT

ASSIGNMENT OF ERROR NO. 1: The trial court erred by entering the Order on Motions.

I. Standard of Review.

The Order on Motions determined the summary judgment motions the parties made. It must therefore be reviewed *de novo*. The appellate court engages in the same inquiry as does the trial court. It must first determine whether there is any genuine issue of fact based on the materials that are submitted. If there are no factual issues, it must decide whether the moving party is entitled to judgment as a matter of law. *Burton v. Twij Commander Aircraft, LLC*, 171 Wn.2d 204, 212, 254 P.3d 778 (2011); *Moeller v. Farmers Insurance Company of Washington*, 155 Wn.App. 133, 140, 229 P.3d 857 (2010)

The questions presented here involve interpretation of certain statutes. Statutory interpretation is a question of law which can be decided in the context of a summary judgment motion and is also subject to *de novo* review. *Calhoun v. State*, 146 Wn.App. 977, 985, 193 P.3d 188 (2008)

In this case, the material facts are undisputed. The trial court simply erred in the legal conclusion it drew from those facts.

II. Applicable Rules for Statutory Interpretation.

The decision in this case depends on the interpretation of the wrongful death statute, RCW 4.20, and the adoption statutes as set out in RCW 26.33 and 1984 Laws of Washington, Chapter 155. Both wrongful death claims and adoption were unknown at common law. Both are creatures of statute, and the effect of each is governed by statutory language. *Atchsion v. Great Western Malting*, 161 Wn.2d 372, 376, 166 P.3d 662 (2007); *Adoption of Baby Boy C.*, 31 Wn.App. 639, 643, 644 P.2d 150 (1982)

Several familiar rules of statutory interpretation are applicable here. First of all, the goal of statutory interpretation is to carry out the intention of the legislature. *American Continental Insurance Company v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004) That intention is generally found in the plain meaning of the statutory language. *Estate of Haselwood v. Bremerton Ice Arena, Inc.* 166 Wn.2d 489, 498, 210 P.3d 308 (2009) Undefined terms are given their dictionary definition. *Grant County Prosecuting Attorney v. Jasman*, 183 Wn.2d 633, 643, 354 P.3d 846 (2015) On the one hand, statutes must be construed so that all the language is given effect and no portion is rendered meaningless or superfluous. *Kilian v. Atkinson*, 147 Wn.2d 16, 21, 50 P.3d 638 (2002) On the other hand, the Court cannot read into the statute language it believes the legislature may

have omitted, intentionally or inadvertently. In other words, the Court cannot adopt an interpretation of the statute that adds language that simply isn't there. *Custody of Smith*, 137 Wn.2d 1, 12, 969 P.2d 21 (1998); *Kleven v. City of Des Moines*, 111 Wn.App. 284, 291, 44 P.3d 887 (2002); *In re Adoption of T.A.W.*, 188 Wn.App. 799, 809, 354 P.3d 46, (2015) Finally, the legislature is presumed to be familiar not only with its own prior legislation relating to the subject at hand but also with court decisions construing such former legislation. *El Cordoba Dormitories, Inc., v. Franklin County Public Utilities District*, 82 Wn.2d 858, 862-63, 514 P.2d 524 (1973)

Some or all of these rules have been applied in cases interpreting the wrongful death statute and the adoption statutes. See, e.g. *Estate of Blessing*, 174 Wn.2d 228, 236-37, 273 P.3d 975 (2012); *Dependency of M.S.*, 156 Wn.App. 907, 913, 236 P.3d 214 (2010)

III. As a Natural Child of the Decedent, Brandon Is a Statutory Beneficiary.

The wrongful death statute, RCW 4.20.020, identifies the beneficiaries of a wrongful death action in the following terms as is relevant here:

Every (wrongful death) action shall be for the benefit of the . . .child or children, including stepchildren, of the person whose death shall have been so caused. . .

The term “child” is not otherwise defined in RCW 4.20. As noted above, the term must therefore be given its plain meaning which is its dictionary definition. The term “child” means a son or a daughter according to the 2016 version of the Merriam Webster Online Dictionary. There is no doubt that the Decedent gave birth to Brandon. He has also represented himself to be the Decedent’s child and the brother of his siblings in the dependency proceedings and in his action to become Laurene’s custodian. Laurene and Dillon also accept him as a brother. He was listed as such on the Petition for Letters of Administration. Laurene referred to him as her brother in her deposition.

The Supreme Court has ruled 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)—holding that a child born out of wedlock is a statutory beneficiary. See also, *Tait v. Wahl*, 97 Wn.App. 765, 770, 987 P.2d 127 (1999) Under this formulation, Brandon must be considered to be a statutory beneficiary.

The analysis need go no further. It is clear that Brandon is a child of the Decedent. Therefore, he is a statutory beneficiary and entitled to share in the wrongful death proceeds.

IV. The Adoption Did Not Terminate the Parent-Child Relationship between Brandon and the Decedent.

a. Introduction

The statute discussing the effect of an adoption has been materially unchanged for nearly one hundred years. Based on this statute, the Supreme Court has ruled that, in the absence of a statute to the contrary, the adoption process does not terminate the parent-child relationship or affect any rights the child may have with respect to the natural parent. There is no statute ending the parent child relationship of adoptees for the purposes of the wrongful death statute. Therefore, Brandon remains a child of the Decedent and a statutory beneficiary.

b. A Decree of Adoption Does Not Terminate the Parent-Child Relationship between the Natural Parent and the Adoptee.

The adoption statute governing Brandon's adoption was enacted as 1984 Laws of Washington, Chapter 155,³ codified as RCW 26.33. According to 1984 Laws of Washington, Chapter 155, Section 41:

This act shall take effect January 1, 1985. Any proceeding initiated before the effective date of this act shall be governed by the law in effect on the date the proceeding was initiated.

³ The trial court was supplied with the entirety of 1984 Laws of Washington, Chapter 155. (CP 158-65)

The 1984 enactment, now codified as RCW 26.33.260(1), discusses the effect of an adoption in the following terms:

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.⁴

This statute must be interpreted in accordance with its plain meaning. There is simply nothing in RCW 26.33.260(1) to the effect that the parent-child relationship between the natural parent and the adoptee ends upon adoption or is otherwise terminated by a decree of adoption. That means that the parent-child relationship between the adoptee and the natural parent survives the adoption. The contrary conclusion would require adding language to the statute that is not there. That, of course, is not permissible as discussed above.

⁴ The adoption statute has been amended since 1984. When an amendment has made a material change, citation will be made to 1984 Laws of Washington, Chapter 155. Otherwise, citation will be made to the relevant portion of RCW 26.33.

The Supreme Court has ruled that materially identical statutory language does not have the effect of terminating the parent-child relationship between the adoptee and the natural parent. It expressed this view explicitly in *Roderick's Estate, supra*. In that case, an adoptee sought a share of her intestate father's estate on the basis that she was his child but was not named in his will. She had been adopted by others in 1916. Her claim was based on the predecessor of RCW 11.12.091. The statute that governed the effect of her adoption read as follows:

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.

158 Wash. at 378-79 The Court noted a general rule to the effect that an adopted child is, in a legal sense, the child both of its natural and of its adopting parents, and is not, because of the adoption, deprived of its right of inheritance from its natural parents, unless the statute expressly so provides. 158 Wash. at 381 It then went on to say:

Our adoption statute grants to the adopted child the right to inherit from its adoptive parent, but does not divest that child of the right of inheritance from its natural parents. The statute is in derogation of the common law. It cannot be assumed, presumed or inferred that the appellant cannot inherit from her father, in the absence of a legislative declaration to that effect.

158 Wash. at 381 Since it found no statute that eliminated rights of adoptees to inherit from their natural parents, it ruled that the adoptee could share in her father's estate.

The Court next considered this question in *Hale v. Department of Labor and Industries*, 20 Wn.2d 14, 145 P.2d 285 (1944). In that case, a child's father was killed in an industrial accident. As a result, the child was entitled to industrial insurance benefits. The child's mother died shortly thereafter, and the child was adopted by others. The Court ruled that his adoption did not have the effect of ending his receipt of industrial insurance benefits. In coming to this conclusion, it stated simply and conclusively:

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.

There is no material difference between RCW 26.33.260(1) and the statute that applied in *Roderick's Estate, supra*. Each states that a decree of adoption has the following effects:

1. The natural parent is divested of all legal rights and obligations with respect to the adoptee;

2. The adoptee is freed from the obligations of obedience and maintenance toward the parents; and

3. The adoptee becomes the child of the adoptive parents for all purposes.

The rule that adoption does not terminate the parent-child relationship between the adoptee and the natural parent as expressed in *Roderick's Estate, supra*, and *Hale v. Department of Labor and Industries, supra*, has not been overruled or otherwise modified by a subsequent decision. The rule therefore remains good law. Since the statute upon which the holdings in those two cases were based is also materially the same as RCW 26.33.260(1), the rule expressed in those two cases continues to apply. Finally, RCW 4.20 has not been changed to define the term “child” to exclude adoptees where damages are sought for the death of the natural parent. As a result, the parent-child relationship between Brandon and the Decedent was not terminated by Brandon’s adoption.

So far, the discussion has identified three areas where the relationship between the natural parent and the adoptee is implicated—inheritance, industrial insurance matters, and wrongful death claims. As discussed above, the legislature is deemed to be aware of the rule

expressed in *Roderick's Estate, supra*, and *Hale v. Department of Labor and Industries, supra*—that the parent-child relationship between the adoptee and the natural parent continues in the absence of a statute severing that relationship. The legislature could have abrogated that general rule by statutory amendment. It has not done so. It did amend the adoption statute addressing the effect of an adoption decree in 1943 and in 1955 without changing the three material aspects of the statute considered in *Roderick's Estate, supra*, set out above and without adding language to the effect that the adoption terminates the parent-child relationship between the adoptee and the natural parent. 1943 Laws of Washington, Chapter 268, Section 12; 1955 Laws of Washington, Chapter 291, Section 14. After the passage of 1984 Washington Law, Chapter 155, there have been many amendments to RCW 26.33. There has only been one amendment to RCW 26.33.260. In 1995 Laws of Washington, Chapter 170, Section 7, the legislature left RCW 26.32.260(1) unchanged but added RCW 26.32.260(2) - (4) which address appeal of adoption decrees.

The legislature certainly has had examples of statutory language to draw upon if it wanted have an adoption decree to end the parent-child relationship between the adoptee and the natural parent. For example, section 14 of the Uniform Adoption Act of 1969 (amended 1971) provides as follows in pertinent part:

(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. . .

9 U.L.A. Part 1A p. 198 The same view has been expressed in fewer words in Section 1-105(1) of the 1994 Uniform Adoption Act as follows:

(T)he 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.

9 U.L.A. Part 1A p. 23 Other statutes, such as those in California, Hawaii, North Carolina, and Wisconsin, simply state that the parent-child relationship between the natural parent and the adoptee is terminated, severed, or ceases to exist. California Probate Code § 6451(a); HRS 578-16(B); NCGSA § 48-1-106(2); and Wis. Stat. 48.92(2) The legislature's failure to amend the adoption statutes to state that adoption terminates the

parent-child relationship between the adoptee and the natural parent means that the legislature has chosen not to abrogate the rule of *Roderick's Estate, supra*, and *Hale v. Department of Labor and Industries, supra*—that adoption does not sever the parent-child relationship between the adopted person and his or her natural parents.

Instead of changing the adoption statute to state that adoption does sever the parent-child relationship between the adoptee and the natural parent, the legislature has chosen to address only one area of concern—the ability of an adoptee to inherit from a natural parent. It enacted RCW 11.04.085 in 1965, which precludes an adoptee from inheriting from a natural parent. That statute reads as follows:

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

The term “heir” means:

“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 11.02.005(6)

But the legislature has not amended the current RCW 51.08.030, which defines the term “child” for the purposes of the industrial insurance laws, to exclude adoptees and change the result in

Hale v. Department of Labor and Industries, supra. The statute now reads as follows:

“Child” means every natural born child, posthumous child, stepchild, child legally adopted prior to the injury, child born after the injury where conception occurred prior to the injury, and dependent child in the legal custody and control of the worker, all while under the age of eighteen years, or under the age of twenty-three years while permanently enrolled at a full time course in an accredited school, and over the age of eighteen years if the child is a dependent as a result of a physical, mental, or sensory handicap.

Critically, and with full knowledge that the Supreme Court had stated that adoption by itself does not terminate the parent-child relationship, the legislature has also not amended RCW 4.20 to state that an adoptee is not considered a child of the decedent and therefore not a statutory beneficiary of the natural parent for the purposes of the wrongful death statute. The absence of any amendment means that the legislature has seen fit not to change the rule in *Roderick's Estate, supra*, and *Hale v. Department of Labor and Industries, supra*, to the effect that adoption does not sever the parent-child relationship between the adoptee and the natural parent.

To summarize, the effect of Brandon's adoption decree is set out in RCW 26.33.260(1). There is nothing in that statute that severed the parent-child relationship between him and the Decedent. In *Roderick's*

Estate, supra, and *Hale v. Department of Labor and Industries, supra*, the Court stated—in interpreting a statute materially the same as RCW 26.33.260(1)—that a decree of adoption does not end the parent-child relationship between a natural parent and an adoptee. The legislature has not changed this rule by amending the adoption statutes to state that an adoption decree severs, terminates, or ends that relationship. It also has not seen fit to exclude adoptees from the definition of children in RCW 4.20.020. Therefore, the decree of adoption did not terminate the parent-child relationship between Brandon and the Decedent for the purposes of the wrongful death statute.

c. The Parent-Child Relationship Was Not “Terminated” by the Operation of RCW 26.33.130(2).

Laurenne and Dillon may claim that the parent-child relationship between Brandon and the Decedent was terminated by the operation of RCW 26.33.130(2). That argument is not supported by the facts. The operation of that statute is triggered by the grant of a petition for relinquishment or termination. That did not occur in Brandon’s adoption. Therefore, that statute is not applicable here.

When Brandon was adopted, the adoption statute allowed for relinquishment of a proposed adoptee and for termination of a natural parent’s relationship with that adoptee. Relinquishment was accomplished

by filing a petition for relinquishment. 1984 Laws of Washington, Chapter 155 Section 8 The Court was then required to set a hearing on the petition and give notice of the hearing to each natural parent. 1984 Laws of Washington, Chapter 155, Section 9(1), (2) At the hearing, the court was required to approve the relinquishment petition if it determined that doing so was in the child's best interests. 1984 Laws of Washington, Chapter 155 Section 9(3) What happened thereafter was spelled out in 1984 Laws of Washington, Chapter 155, Section 9(4) as follows:

If the court approves the petition, it shall award custody of the child to the department,⁵ agency,⁶ 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 section 13 of this act terminating the parent-child relationship of the parent and the child.

The department, an adoption agency, or a prospective adoptive parent could also petition for termination of the parent-child relationship. 1984 Laws of Washington, Chapter 155, Section 10(1) If, after a hearing, the court could terminate the parent-child relationship if it found by clear, cogent, and

⁵ The term "department" refers to the Department of Social and Health Services. 1984 Laws of Washington, Chapter 155, Section 2(6)

⁶ The term "agency" refers to any public or private association, corporation, or individual licensed or certified by the department as a child placing agency under then chapter 74.14 or as an adoption agency. 1984 Laws of Washington, Chapter 155, Section 2(7)

convincing evidence that “it is in the best interest of the child to terminate the relationship and that the parent has failed to perform parental duties under circumstances showing a substantial lack of regard for his or her parental obligations and is withholding consent to adoption contrary to the best interest of the child.” 1984 Laws of Washington, Chapter 155, Section 12(1).

If either termination or relinquishment was approved, then:

If the court determines, after a hearing, that the parent-child relationship should be terminated pursuant to section 9 or 12 of this act, the court shall enter an appropriate order terminating the parent-child relationship.

1984 Laws of Washington, Chapter 155, Section 13(1) The effect of such an order is set out in RCW 26.33.130(2) as follows:

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.

The 1984 enactment also allowed for adoption without relinquishment and accompanying termination. An adoption proceeding is initiated by a petition filed by the prospective adoptive parent. RCW 26.33.150(1) If the adoptee is under the age of eighteen years, the adoptee’s natural parents must give consent. RCW 26.33.160(1)(b)

Importantly, however, the consent of a parent whose parent-child relationship with the child had been terminated was not required when Brandon was adopted. This follows from the definition of the term “parent” in 1984 Laws of Washington, Chapter 155, Section 2(8) which provides as is material:

“Parent” means the natural or adoptive mother or father of a child. . . It does not include any person whose parent-child relationship has been terminated by a court of competent jurisdiction.

Since a person whose parent-child relationship had been terminated was not a “parent,” the consent of that person was not required. The statute then required a hearing to determine the validity of the consents given and whether the adoption is in the interests of the adoptee. Ultimately, the court was required to allow the adoption if it found that the adoption was in the adoptee’s best interest. 1984 Laws of Washington, Chapter 155, Section 23(3) As can be seen, the adoption process does not require a prior relinquishment or termination.

There was no relinquishment or termination in this case. The adoption was initiated by the Petition for Adoption filed on behalf of the Saldareses. It was not coupled with a petition for relinquishment. The petition does not contain the word “relinquishment.” (CP 71-74) It was accompanied by documents entitled Consent to Adoption by Natural

Mother and Consent to Adoption by Natural Father signed by,
respectively, the Decedent and Brandon's natural father, Mr. Graves.

Each contains the following language:

That I hereby authorize and consent to the adoption of said child by the Co-Petitioners herein (the Saludareses) provided the Court finds that such action is proper.

Neither contains a statement to the effect that the person signing relinquishes any rights to Brandon or consents to the termination of that person's parent-child relationship with him. The word "relinquishment" or some derivative can be found in only one place. In paragraph 4 of each document there is the statement that the consent is subject to court approval 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." (CP 65-70) No "Order of Relinquishment" was ever entered. No one was appointed to be Brandon's guardian pending resolution of the adoption as would have been required had there been a relinquishment. No order terminating the parent-child relationship between Brandon and his natural parents was ever entered. The words "terminate," "termination," "terminated" or any other similar derivation do not appear in either the Findings of Fact and Conclusions of Law or the Decree of Adoption that were subsequently

entered. (CP 55-59) This means that the consequences of RCW 26.33.130(2) were never triggered.

This should not be surprising under the circumstances. This was an intra-family adoption. The Decedent and Mr. Graves were obviously interested in having Brandon adopted by the Saludaresses so that they could continue some level of relationship with him. It is clear that they desired to maintain the ability to consent to Brandon's adoption by the Saludaresses and not by anyone else. Their consents both state as much, that they consent to the adoption by the Saludaresses. Had there been a relinquishment with the accompanying termination, they would have lost the right to give this consent.

Viewed in a slightly different way, the consents of the Decedent and Mr. Graves would not have been necessary if their parental rights had been terminated. They would no longer have come under the definition of "parent" from whom a consent is required before there can be an adoption. The fact that each of Brandon's parents executed a Consent to Adoption means that the parental rights of neither were terminated.

Even if there had been a termination, it would not have affected Brandon's status as a statutory beneficiary under RCW 4.20.020. A termination order entered pursuant to RCW 26.33.130(2) "divests the

parent and the child of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other.” It does not say that it terminates or severs the parent-child relationship. More importantly, the right of the beneficiary under RCW 4.20.020 is the right to obtain a recovery from a tortfeasor. In other words, RCW 4.20.020 creates a right in a decedent’s child with respect to the tortfeasor not with respect to the parent.

d. The Effect of the Adoption Decree Cannot Be Changed by the Language of the Order.

Laurenne argued to the trial court that certain language within the Adoption Decree has the effect of severing the parent-child relationship between the Decedent and Brandon. Suffice it to say that there is nothing in that order that states that the relationship is “terminated,” “severed,” “ended,” or any similar verbiage. Any such argument must fail because an adoption decree has the effect given to it by statute, in this case RCW 26.33.260(1).

When a judgment is lawful in one part but not lawful in another, the part that is not lawful is disregarded as surplusage. *State v. Superior Court*, 115 Wash. 154, 158, 196 P. 577 (1921); *In re Clark*, 24 Wn.2d 105, 113, 163 P. 2d 577 (1945); *Hanson v. Hanson*, 55 Wn.2d 884,

887, 359 P.2d 859 (1960) *Hanson v. Hanson, supra*, provides an apt illustration of this rule. In a decree of dissolution, the Superior Court improperly reserved the right to alter the property division, something that it could not do under statute. The Court ruled that the language of reservation would be ignored as mere surplusage.

The legislature has indicated what the effects of an adoption decree might be. All the court needed to say was that the petition for adoption was granted. The remainder is surplusage that must be ignored to the extent that it states a status or rights other than set out in RCW 26.33.260(1).

e. Any Other Interpretation of the Adoption Statutes Is at Odds with RCW 26.33.010.

In 1984, the legislature also enacted RCW 26.33.010 which reads as follows:

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.

(Emphasis added) This guiding principle was part of the Court’s rationale for its decision that grandparents may intervene in adoption proceedings. *Avery v. Department of Social and Health Services*, 150 Wn.2d 409, 417 78 P.3d 634 (2003)

Naturally, interpretation of the adoption statutes to allow Brandon to remain a child of the Decedent for purposes of the wrongful death statutes is in his best interest. Laurene and Dillon seek a result not in keeping with RCW 26.33.010—interpreting the adoption statutes in a manner that favors them, Brandon’s natural siblings. A rule stating that an adoptee is not a child of his or her natural parent for the purposes of the wrongful death statute would also be a boon to another group—tortfeasors who cause the death of a decedent—as is shown by the following example:

Sharon, who was adopted as an infant, locates Sarah, her natural mother, when she is twenty-five years old. The two begin a warm relationship beneficial to both. Sarah has not married and has no other children. Sarah dies in a motor vehicle collision caused by the fault of a drunk driver.

The tortfeasor in this case would argue, just as the tortfeasor in *Armijo v. Wesselius*, *supra*, argued, that Sharon is not a statutory beneficiary. If he is successful, he will have no liability under the wrongful death statute. Certainly, the legislature could not have intended such a result.

The legislature intended to benefit adoptees by the enactment of the adoption statutes. Any use of the adoption statutes to argue that Brandon is not a statutory beneficiary must be rejected because it stands that intention on its head.

f. Decisions from Other Jurisdictions Are Not Helpful Because They Are Based on Different Statutes.

Dillon and Laurenne may call the Court's attention to decisions from other jurisdictions that have held that an adoptee cannot recover for the wrongful death of a natural parent. Those decisions are based on statutes that state that adoption terminates the parent-child relationship between the natural parent and the adoptee. Our statute, RCW 26.33.260(1) does not say that, and the Supreme Court has held that a statute having materially the same language does not have the effect of ending that parent-child relationship. The cases from other states are not helpful for that reason.

Courts in California and Georgia have held that an adoptee was not entitled to any recovery in an action to recover for the wrongful death of the natural parent. *Phraner v. Cote Mart, Inc.*, 55 Cal.App. 4th 166, 63 Cal.Rptr.2d 740 (1997); *Johnson v. Parrish*, 159 Ga.App. 613, 284 S.E.2d 111 (1993) Federal courts interpreting the laws of both

Arkansas and Louisiana have come to the same conclusion. *Webb v. Harvell*, 563 F.Supp. 172 (W.D. Ark. 1983); *Cormier v. Williams/Sedco/Horn Constructors*, 460 F.Supp. 1010 (E.D. La. 1978) In each case, the Court's decision was based on a statute that stated that a decree of adoption terminates the parent-child relationship between the adoptee and the natural parent or divests the child of all legal rights as to the parent. See, California Probate Code § 6451(a); A.C.A. § 9-9-215(a)(1);⁷OCGA 19-8-19(a)(1);⁸ then LSA-CC Art. 214 as discussed in *Cormier v. Williams/Sedco/Horn Constructors*, *supra*, 410 F.Supp. at 1012-1013 Both the Arkansas and Georgia formulations are taken from or are very close to the Uniform Adoption Code of 1969, discussed above. The holdings of these cases are understandable in the context of the statutory schemes in which they were decided. If adoption terminates the parent-child relationship between the adoptee and the natural parent, the adoptee cannot be considered a "child" for the purposes of a wrongful death statute. But RCW 26.33.260(1) does not include language terminating the relationship between the adoptee and the natural parent. Therefore, these cases are not helpful.

⁷ When *Webb v. Harvell*, *supra*, was decided, the statute was codified as Ark.Stat. Ann. § 56-215(a)(1) 563 F.Supp. at 175

⁸ This codification of the Georgia statute is noted in *Eig v. Savage*, 177 Ga.App. 514, 515, 336 S.E.2d 752 (1986)

Adoptees are also not allowed to recover for the wrongful death of a natural parent in Michigan. That is so because adoptees are not allowed to inherit from a natural parent in Michigan and, as the Court held in *Estate of Renaud*, 202 Mich.App. 588, 509 N.W. 2d 858 (1993), the status of wrongful death beneficiary is tied to the ability to inherit under Michigan's wrongful death statute. This decision is also not helpful because beneficiary status under RCW 4.20.020 is not related to ability to inherit. Furthermore, some people who are statutory beneficiaries may not be able to inherit. Stepchildren are statutory beneficiaries pursuant to RCW 4.20.020 but can inherit only if the estate would otherwise escheat to the State. RCW 11.04.095 Conversely, there are people who can inherit but cannot be statutory beneficiaries. Grandchildren are the best example. They inherit if the decedent is not survived by a spouse or children. RCW 11.04.015(2)(a) But they are not listed as statutory beneficiaries under RCW 4.20.020. Likewise, if a decedent leaves no issue, siblings, or parents surviving, then nieces, nephews, or grandparents may inherit. RCW 11.04.015(2)(d), (e) They are not statutory beneficiaries either. There is one other critical difference between Washington and Michigan. The laws of intestacy do not govern distribution of the proceeds of the wrongful death settlement because the recovery is not part of the decedent's estate. *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)

Since Brandon is a Washington adoptee, his status must be based on the effect of a Washington adoption as set out in Washington statutes. Cases from other jurisdictions with different statutory language concerning the effect of an adoption are not helpful.

g. Recovery by an Adoptee Is Consistent with Washington Statutes Allowing for Contact between Adoptees and Natural Parents.

There is no reason to withhold compensation from all adoptees for the wrongful death of their natural parents. Wrongful death actions compensate “pecuniary loss” which includes the loss of the decedent’s support, services, love, affection, care, companionship, society, and consortium. *Bowers v. Fibreboard Corp.*, 66 Wn.App. 454, 460 (1992). Some adoptees have and continue to maintain relationships with their natural parents. This can occur in the context of stepparent adoptions or when an adoptees and natural parents find each other as suggested by the example set out above. Washington has now adopted procedures that allow for contact between adoptees and natural parents in RCW 26.33.343 - .347. Such contact can result in the development of a relationship between the natural parent and the adoptee. This case involves an intra-

family adoption. There is no doubt that Brandon maintained a relationship with his mother, the Decedent, after the adoption.

The overriding point here is that pecuniary loss in wrongful death actions is measured separately as to each beneficiary. *Cornejo v. State*, 57 Wn.App. 314, 330, 788 P.2d 554 (1990) In many cases, the adoptee will have no relationship with the natural parent and will suffer no pecuniary loss upon the natural parent's death. But the same can be said for children who become estranged from their parents for whatever reason. The adoptee's recovery should be based on the nature and quality of his or her relationship with the deceased natural parent.

h. Affording Adoptees the Status of Statutory Beneficiaries Will Not Result in Fraud or "Double Recovery."

Laurenne and Dillon have suggested that allowing adoptees to be statutory beneficiaries under the terms of RCW 4.20.020 will lead to fraud or a "double recovery." Neither contention has any merit.

In *Armijo v. Wesselius*, *supra*, the defendant argued that a child of the decedent who was born out of wedlock should not be considered a statutory beneficiary. He claimed that allowing such children to become statutory beneficiaries "would place decedents' estates at the mercy of unscrupulous charlatans who will pose as illegitimate children

for the purpose of reaping undeserved benefits.” 73 Wn.2d at 720 The Court rejected this argument on two grounds. First of all, it was not applicable in that case because there was no doubt that the child at issue in that case was in fact a child of the decedent. Secondly, it stated that the normal burdens of proof were sufficient to weed out such a claim. 73 Wn.2d at 720 Likewise, there is no doubt that Brandon is a child of the decedent. Furthermore, the advent of DNA testing for parentage—which was generally not available when *Armijo v. Wesselius, supra*, was decided—will insure that no one who is not a natural child of the decedent will ever be able to make a successful claim.

The notion of “double recovery” as expressed by Dillon is based on the belief that a child should have the potential for two and only two wrongful death claims based on the death of his or her parents. Such a limitation is inconsistent with the legislature’s intent as expressed in RCW 4.20.020. Stepchildren are statutory beneficiaries. Obviously, a stepchild could conceivably have two claims for wrongful death based on the passing of his or her natural parents and one or more claims based on the death of a stepparent. *Estate of Blessing, supra*

i. The Doctrine of Judicial Estoppel Requires that Brandon Be a Statutory Beneficiary.

Brandon was listed as a son of the Decedent on the Petition for Letters of Administration, a pleading that Laurene verified. He was later sent notice of the pendency of probate proceedings. Those actions require that he be considered a statutory beneficiary by the operation of the doctrine of judicial estoppel.

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. It seeks to preserve respect for judicial proceedings and to avoid inconsistency, duplicity, and waste of time. It applies when a party takes a position that is accepted by the Court or benefits that party and later that party takes an inconsistent position. *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 160 P.3d 113 (2007); *Johnson v. Si-Cor, Inc.* 107 Wn.App. 902, 28 P.3d 832 (2001); *Cunningham v. Reliable Plumbing, Inc.* 126 Wn.App. 222, 108 P.3d 147 (2005)

A petition for letters of administration must name of the decedent's heirs. RCW 11.28.110 After appointment, the personal representative must give notice of the appointment to all heirs. RCW 11.28.237(1) The Petition for Letters of Administration listed Brandon as

an heir and a son of the Decedent. It was verified by Laurene. It was filed for one purpose—to secure Laurene’s appointment so that a wrongful death claim could be filed. (CP 2) Notice of Laurene’s appointment and the pendency of probate proceedings was then sent to Brandon.

The requirements for judicial estoppel are met here, at least as to Laurene. Appointment of a personal representative was necessary to the prosecution of a wrongful death claim. RCW 4.20.010 Laurene received a benefit from the Petition for Letters of Administration. Without it and her resulting appointment as personal representative, a wrongful death claim could not have been filed. And as a result of that claim, she has recovered a portion of the proceeds of the wrongful death settlement. Laurene now contends that Brandon is not a statutory beneficiary. This is not consistent with the Petition for Letters of Administration which she verified. Therefore, she should be judicially estopped from claiming that Brandon is not a child of the Decedent for the purposes of RCW 4.20.020. At least there is a genuine issue of material fact on this question.

k. Conclusion.

Brandon is clearly a child of the Decedent. His adoption did not terminate the parent-child relationship between the two.

Therefore, Brandon is a statutory beneficiary and entitled to a portion of the proceeds of the wrongful death settlement commensurate with his loss.

ASSIGNMENT OF ERROR NO. 2: The trial court erred by entering the Order Approving Distribution Method for Wrongful Death Settlement Proceeds.

I. Introduction.

After entering the Order on Motions, the trial court entered the Order Approving Distribution Method for Wrongful Death Settlement Proceeds. The trial court erred in doing so. It was required to determine the damages suffered by each of the three beneficiaries. It held no hearing for that purpose and entered no findings of fact in that regard. It also made no distribution to Brandon despite the fact that he is a statutory beneficiary as discussed above. This order must also be reversed for these reasons.

II. Standard of Review.

As discussed below, a determination of the damages suffered by each statutory beneficiary must be made when a wrongful death settlement does not specifically set out an amount of pecuniary loss to be allocated to each beneficiary. Pecuniary loss in this context is a form of non-economic damage that amounts to a factual issue. RCW 4.56.250(1)(b); *James v.*

Robeck, 79 Wn.2d 2 864, 869, 490 P.2d 878 (1971); *Sofie v. Fibreboard Corp.*, 112 Wn.2d 634, 646-48, 771 P.2d 711 (1989); *Moody v. United States*, 112 Wn.2d 690, 773 P.2d 67 (1989) A trial court must make findings of fact on determinative factual matters. *Maehren v. Seattle*, 92 Wn.2d 480, 487-88, 599 P.2d 1255 (1979) The appellate court reviews these to determine whether they are supported by substantial evidence. *City of Puyallup v. Hogan*, 168 Wn.App. 406, 419, 277 P.3d 49 (2012)

In this case, no factual hearing was held and no findings of fact were made. The trial court never determined the pecuniary of loss of any beneficiary. Allowing disbursement of the proceeds without making the necessary findings was error.

An error of law also inheres in the Order Approving Distribution Method for Wrongful Death Settlement Proceeds. The appellate court reviews such errors *de novo*. *City of Puyallup v. Hogan, supra*.

II. The Settlement Proceeds Must Be Divided Among the Statutory Beneficiaries in Amounts to Be Determined.

In our case, a lump sum settlement was made without any differentiation among statutory beneficiaries. The court hearing the matter must first segregate settlement proceeds by claim. There was no economic loss in this case. The damages elements would the pecuniary loss that each beneficiary suffered together with the decedent's pain and suffering

subsequent to the act that caused death if the decedent is survived by children. In this regard, RCW 4.20.060 states as follows in pertinent part:

No action for personal injury to any person causing death shall abate by reason of such death, if such person has . . . a child living. . . ; but such action may be . . . commenced and prosecuted. . . by the . . . administrator of the deceased . . . in favor of such child or children . . .

There must first be a segregation of settlement proceeds by claim. Then there must be a determination of the actual “pecuniary damages” suffered by each statutory beneficiary. The amount of damages, of course, can vary between beneficiaries based on a myriad of factors. The settlement proceeds are then divided accordingly. *Parrish v. Jones*, 44 Wn.App. 449, 722 P.2d 878 (1986)

The trial court made no provision for Brandon in the Order Approving Distribution Method for Wrongful Death Settlement Proceeds. This was error because, as discussed above, he is a statutory beneficiary entitled to a portion of the settlement proceeds based on the value of his pecuniary loss.

The trial court also did not follow the direction set out in *Parrish v. Jones, supra*. It did not hold an evidentiary hearing to determine the amount of damages attributable to each claim or the damages that each

beneficiary sustained by way of pecuniary loss. It made no findings of fact in this regard.

Rather, the trial court divided the net proceeds into thirds and ordered that Laurene and Dillon each receive one-third. In doing so, it ignored the fact that each of the beneficiaries may have suffered a different level of loss based on the Decedent's death. Insofar as Brandon is concerned, his pecuniary loss may be greater or less than that of each of his siblings. The point here is that no division or disbursement is appropriate in the absence of appropriate findings of fact as to the amount to be attributed to each claim and the amount of pecuniary loss suffered by each beneficiary. This was error.

CONCLUSION

The Court should reverse the Order on Motions and the Order Approving Distribution Method for Wrongful Death Settlement Proceeds. It should rule that Brandon is a statutory beneficiary and is entitled to share in the proceeds of the wrongful death settlement. It should then remand the matter back to the trial court with directions to determine the pecuniary loss suffered by each of the Decedent's three children and for disbursement of the proceeds of the settlement accordingly.

DATED this 15 day of September, 2016.



BEN SHAFTON WSB#6280
Of Attorneys for Brandon Saldares

APPENDIX

Washington Statutes

RCW 4.20.010

When the death of a person is caused by the wrongful act, neglect, or default of another his or her personal representative may maintain an action for damages against the person causing the death; and although the death shall have been caused under such circumstances as amount, in law, to a felony.

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 4.56.250(1)

(1) As used in this section, the following terms have the meanings indicated unless the context clearly requires otherwise.

(a) “Economic damages” means objectively verifiable monetary losses, including medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, loss of employment, and loss of business or employment opportunities.

(b) “Noneconomic damages” means subjective, nonmonetary losses, including, but not limited to pain, suffering, inconvenience, mental anguish, disability or disfigurement incurred by the injured party, emotional distress, loss of society and companionship, loss of consortium, injury to reputation and humiliation, and destruction of the parent-child relationship.

(c) “Bodily injury” means physical injury, sickness, or disease, including death.

(d) “Average annual wage” means the average annual wage in the state of Washington as determined under RCW 50.04.355.

RCW 11.04.015(2)

(2) Shares of others than surviving spouse or state registered domestic partner. The share of the net estate not distributable to the surviving spouse or state registered domestic partner, or the entire net estate if there is no surviving spouse or state registered domestic partner, shall descend and be distributed as follows:

(a) To the issue of the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or if of unequal degree, then those of more remote degree shall take by representation.

(b) If the intestate not be survived by issue, then to the parent or parents who survive the intestate.

(c) If the intestate not be survived by issue or by either parent, then to those issue of the parent or parents who survive the intestate; if they are all in the same degree of kinship to the intestate, they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation.

(d) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents who survive the intestate, then to the grandparent or grandparents who survive the intestate; if both maternal and paternal grandparents survive the intestate, the maternal grandparent or grandparents shall take one-half and the paternal grandparent or grandparents shall take one-half.

(e) If the intestate not be survived by issue or by either parent, or by any issue of the parent or parents or by any grandparent or grandparents, then to those issue of any grandparent or grandparents who survive the intestate; taken as a group, the issue of the maternal grandparent or grandparents shall share equally with the issue of the paternal grandparent or grandparents, also taken as a group; within each such group, all members share equally if they are all in the same degree of kinship to the intestate, or, if some be of unequal degree, then those of more remote degree shall take by representation.

RCW 11.04.095

If a person dies leaving a surviving spouse or surviving domestic partner and issue by a former spouse or former domestic partner and leaving a will whereby all or substantially all of the deceased's property passes to the surviving spouse or surviving domestic partner or having before death conveyed all or substantially all his or her property to the surviving spouse or surviving domestic partner, and afterwards the latter dies without heirs and without disposing of his or her property by will so that except for this section the same would all escheat, the issue of the spouse or domestic partner first deceased who survive the spouse or domestic partner last deceased shall take and inherit from the spouse or domestic partner last deceased the property so acquired by will or conveyance or the equivalent thereof in money or other property; if such issue are all in the same degree of kinship to the spouse or domestic partner first deceased they shall take equally, or, if of unequal degree, then those of more remote degree shall take by representation with respect to such spouse or such domestic partner first deceased.

RCW 11.12.091

- (1) If a will fails to name or provide for a child of the decedent who is born or adopted by the decedent after the will's execution and who survives the decedent, referred to in this section as an "omitted child," the child must receive a portion of the decedent's estate as provided in subsection (3) of this section, unless it appears either from the will or from other clear and convincing evidence that the failure was intentional.
- (2) In determining whether an omitted child has been named or provided for, the following rules apply:
 - (a) A child identified in a will by name is considered named whether identified as a child or in any other manner.
 - (b) A reference in a will to a class described as the children, descendants, or issue of the decedent who are born after the execution of the will, or words of similar import, constitutes a naming of a person who falls within the class. A reference to another class, such as a decedent's heirs or family, does not constitute such a naming.

(c) A nominal interest in an estate does not constitute a provision for a child receiving the interest.

(3) The omitted child must receive an amount equal in value to that which the child would have received under RCW 11.04.015 if the decedent had died intestate, unless the court determines on the basis of clear and convincing evidence that a smaller share, including no share at all, is more in keeping with the decedent's intent. In making the determination, the court may consider, among other things, the various elements of the decedent's dispositive scheme, provisions for the omitted child outside the decedent's will, provisions for the decedent's other children under the will and otherwise, and provisions for the omitted child's other parent under the will and otherwise.

(4) In satisfying a share provided by this section, the bequests made by the will abate as provided in chapter 11.10 RCW.

RCW 11.28.110

Application for letters of administration, or, application for an adjudication of intestacy and heirship without the issuance of letters of administration shall be made by petition in writing, signed and verified by the applicant or his or her attorney, and filed with the court, which petition shall set forth the facts essential to giving the court jurisdiction of the case, and state, if known, the names, ages and addresses of the heirs of the deceased and that the deceased died without a will. If the application for an adjudication of intestacy and heirship does not request the appointment of a personal representative and the court enters an adjudication of intestacy no further administration shall be required except as set forth in RCW 11.28.330 or 11.28.340.

RCW 11.28.237(1)

(1) Within twenty days after appointment, the personal representative of the estate of a decedent shall cause written notice of his or her appointment and the pendency of said probate proceedings, to be served personally or by mail to each heir, legatee and devisee of the estate and each beneficiary or transferee of a nonprobate asset of the decedent whose names and addresses are known to him or her, and proof of such mailing or service shall be made by affidavit and filed in the cause. If a trust is a legatee or devisee of the estate or a beneficiary or transferee of a nonprobate asset of the decedent, then notice to the trustee is sufficient.

RCW 26.33.150(1)

(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)

(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 26.32.260(2) – (4)

- (2) Any appeal of an adoption decree shall be decided on an accelerated review basis.
- (3) Except as otherwise provided in RCW 26.33.160 (3) and (4)(h), no person may challenge an adoption decree on the grounds of:
 - (a) A person claiming or alleging paternity subsequently appears and alleges lack of prior notice of the proceeding; or
 - (b) The adoption proceedings were in any other manner defective.
- (4) It is the intent of the legislature that this section provide finality for adoptive placements and stable homes for children.

RCW 26.33.343

- (1) An adopted person over the age of twenty-one years, or under twenty-one with the permission of the adoptive parent, or a birth parent or member of the birth parent's family after the adoptee has reached the age of twenty-one may petition the court to appoint a confidential intermediary. A petition under this section shall state whether a certified statement is on file with the department of health as provided for in RCW 26.33.347 and shall also state the intent of the adoptee as set forth in any such statement. The intermediary shall search for and discreetly contact the birth parent or adopted person, or if they are not alive or cannot be located within one year, the intermediary may attempt to locate members of the birth parent or adopted person's family. These family members shall be limited to the natural grandparents of the adult adoptee, a brother or sister of a natural parent, or the child of a natural parent. The court, for good cause shown, may allow a relative more distant in degree to petition for disclosure.
- (2)
 - (a) Confidential intermediaries appointed under this section shall complete training provided by a licensed adoption service or another court-approved entity and file

an oath of confidentiality and a certificate of completion of training with the superior court of every county in which they serve as intermediaries. The court may dismiss an intermediary if the intermediary engages in conduct which violates professional or ethical standards.

(b) The confidential intermediary shall sign a statement of confidentiality substantially as follows:

I, , signing under penalty of contempt of court, state: "As a condition of appointment as a confidential intermediary, I affirm that, when adoption records are opened to me:

I will not disclose to the petitioner, directly or indirectly, any identifying information in the records without further order from the court.

I will conduct a diligent search for the person being sought and make a discreet and confidential inquiry as to whether that person will consent to being put in contact with the petitioner, and I will report back to the court the results of my search and inquiry.

If the person sought consents to be put in contact with the petitioner, I will attempt to obtain a dated, written consent from the person, and attach the original of the consent to my report to the court. If the person sought does not consent to the disclosure of his or her identity, I shall report the refusal of consent to the court.

I will not make any charge or accept any compensation for my services except as approved by the court, or as reimbursement from the petitioner for actual expenses incurred in conducting the search. These expenses will be listed in my report to the court.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law, and subjects me to being found in contempt of court."

/s/ date

(c) The confidential intermediary shall be entitled to reimbursement from the petitioner for actual expenses in conducting the search. The court may authorize a reasonable fee in addition to these expenses.

(3) If the confidential intermediary is unable to locate the person being sought within one year, the confidential intermediary shall make a recommendation to the court as to whether or not a further search is warranted, and the reasons for this recommendation.

(4) In the case of a petition filed on behalf of a natural parent or other blood relative of the adoptee, written consent of any living adoptive parent shall be obtained prior to contact with the adoptee if the adoptee:

(a) Is less than twenty-five years of age and is residing with the adoptive parent; or

(b) Is less than twenty-five years of age and is a dependent of the adoptive parent.

(5) If the confidential intermediary locates the person being sought, a discreet and confidential inquiry shall be made as to whether or not that person will consent to having his or her present identity disclosed to the petitioner. The identity of the petitioner shall not be disclosed to the party being sought. If the party being sought consents to the disclosure of his or her identity, the confidential intermediary shall obtain the consent in writing and shall include the original of the consent in the report filed with the court. If the party being sought refuses disclosure of his or her identity, the confidential intermediary shall report the refusal to the court and shall refrain from further and subsequent inquiry without judicial approval.

(6)

(a) If the confidential intermediary obtains from the person being sought written consent for disclosure of his or her

identity to the petitioner, the court may then order that the name and other identifying information of that person be released to the petitioner.

(b) If the person being sought is deceased, the court may order disclosure of the identity of the deceased to the petitioner.

(c) If the confidential intermediary is unable to contact the person being sought within one year, the court may order that the search be continued for a specified time or be terminated.

RCW 26.33.345

(1) The department of social and health services, adoption agencies, and independent adoption facilitators shall release the name and location of the court where a relinquishment of parental rights or finalization of an adoption took place to an adult adoptee, a birth parent of an adult adoptee, an adoptive parent, a birth or adoptive grandparent of an adult adoptee, or an adult sibling of an adult adoptee, or the legal guardian of any of these.

(2) The department of health shall make available a noncertified copy of the original birth certificate of a child to the child's birth parents upon request.

(3)

(a) For adoptions finalized after October 1, 1993, the department of health shall provide a noncertified copy of the original birth certificate to an adoptee eighteen years of age or older upon request, unless the birth parent has filed an affidavit of nondisclosure before July 28, 2013, or a contact preference form that indicates he or she does not want the original birth certificate released: PROVIDED,

That the affidavit of nondisclosure, the contact preference form, or both have not expired.

(b) For adoptions finalized on or before October 1, 1993, the department of health may not provide a noncertified copy of the original birth certificate to the adoptee until after June 30, 2014. After June 30, 2014, the department of health shall provide a noncertified copy of the original birth certificate to an adoptee eighteen years of age or older upon request, unless the birth parent has filed a contact preference form that indicates he or she does not want the original birth certificate released: PROVIDED, That the contact preference form has not expired.

(c) An affidavit of nondisclosure expires upon the death of the birth parent.

(4)

(a) Regardless of whether a birth parent has filed an affidavit of nondisclosure or when the adoption was finalized, a birth parent may at any time complete a contact preference form stating his or her preference about personal contact with the adoptee, which, if available, must accompany an original birth certificate provided to an adoptee under subsection (3) of this section.

(b) The contact preference form must include the following options:

(i) I would like to be contacted. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate;

(ii) I would like to be contacted only through a confidential intermediary as described in RCW 26.33.343. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate;

(iii) I prefer not to be contacted and have completed the birth parent updated medical history

form. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate; and

(iv) I prefer not to be contacted and have completed the birth parent updated medical history form. I do not want a noncertified copy of the original birth certificate released to the adoptee.

(c) If the birth parent indicates he or she prefers not to be contacted, personally identifying information on the contact preference form must be kept confidential and may not be released.

(d) Nothing in this section precludes a birth parent from subsequently filing another contact preference form to rescind the previous contact preference form and state a different preference.

(e) A contact preference form expires upon the death of the birth parent.

(5) If a birth parent files a contact preference form, the birth parent must also file an updated medical history form with the department of health. Upon request of the adoptee, the department of health must provide the adoptee with the updated medical history form filed by the adoptee's birth parent.

(6) Both a completed contact preference form and birth parent updated medical history form are confidential and must be placed in the adoptee's sealed file.

(7) If a birth parent files a contact preference form within six months after the first time an adoptee requests a copy of his or her original birth certificate as provided in subsection (3) of this section, the department of health must forward the contact preference form and the birth parent updated medical history form to the address of the adoptee.

(8) The department of health may charge a fee not to exceed twenty dollars for providing a noncertified copy of a birth certificate to an adoptee.

(9) The department of health must create the contact preference form and an updated medical history form. The contact preference form must provide a method to ensure personally identifying information can be kept confidential. The updated medical history form may not require the birth parent to disclose any identifying information about the birth parent.

(10) If the department of health does not provide an adoptee with a noncertified copy of the original birth certificate because a valid affidavit of nondisclosure or contact preference form has been filed, the adoptee may request, no more than once per year, that the department of health attempt to determine if the birth parent is deceased. Upon request of the adoptee, the department of health must make a reasonable effort to search public records that are accessible and already available to the department of health to determine if the birth parent is deceased. The department of health may charge the adoptee a reasonable fee to cover the cost of conducting a search.

RCW 26.33.347

(1) An adopted person over the age of eighteen may file with the department of health a certified statement declaring any one or more of the following:

(a) The adoptee refuses to consent to the release of any identifying information to a biological parent, biological sibling, or other biological relative and does not wish to be contacted by a confidential intermediary except in the case of a medical emergency as determined by a court of competent jurisdiction;

(b) The adoptee consents to the release of any identifying information to a confidential intermediary appointed under RCW 26.33.343, a biological parent, biological sibling, or other biological relative;

(c) The adoptee desires to be contacted by his or her biological parents, biological siblings, other biological

relatives, or a confidential intermediary appointed under RCW 26.33.343;

(d) The current name, address, and telephone number of the adoptee who desires to be contacted.

(2) The certified statement shall be filed with the department of health and placed with the adoptee's original birth certificate if the adoptee was born in this state, or in a separate registry file for reference purposes if the adoptee was born in another state or outside of the United States. When the statement includes a request for confidentiality or a refusal to consent to the disclosure of identifying information, a prominent notice stating substantially the following shall also be placed at the front of the file: "AT THE REQUEST OF THE ADOPTEE, ALL RECORDS AND IDENTIFYING INFORMATION RELATING TO THIS ADOPTION SHALL REMAIN CONFIDENTIAL AND SHALL NOT BE DISCLOSED OR RELEASED WITHOUT A COURT ORDER SO DIRECTING."

(3) An adopted person who files a certified statement under subsection (1) of this section may subsequently file another certified statement requesting to rescind or amend the prior certified statement

Washington Session Laws

1943 Laws of Washington Chapter 268, Section 12

By a decree of adoption 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, and for all legal incidents, the child, legal heir, and lawful issue of his or her adopter or adopters, 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 child of the adopter or adopters begotten in lawful wedlock. An adopter or adopters and the spouse of an adopted child, and their respective kin, shall have the rights of inheritance from such child prescribed by the statutes of descent and distribution for natural parents, spouse and their respective kin to the exclusion of the adopted child's natural parents and kin and any prior adopter or adopters and their kin: *Provided*, That where an adopter is the spouse of a natural parent of an adopted child, such natural and adopted parent and kin shall inherit the same as natural parents and their kin.

1955 Laws of Washington Chapter 291, Section 14

By a decree of adoption, the natural parents shall be divested of all legal rights and obligations in respect to the child, and the child shall be free from all legal obligations of obedience and maintenance in respect to them, and shall be for all legal incident, the child, legal heir, and lawful issue of his or her adopter or adopters, 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 child of the adopter or adopters begotten in lawful wedlock. An adopter or adopters and the spouse of an adopted child, and their respective kin, shall have the rights of inheritance from such child prescribed by the statutes of descent and distribution for natural parents, spouse, and their respective kin to the exclusion of the adopted child's natural parents and kin and any prior adopted or adopters and their kin: *Provided*, That where an adopter is the spouse of a natural parent of an adopted child, such natural and adopted parent and kin shall inherit the same as natural parents and their kin.

1984 Laws of Washington Section 2(3), (4), (6), (7)

(3) “Adoptee” means a person who is to be adopted or who has been adopted.

(4) “Adoptive parent” means the person or persons who seek to adopt or have adopted an adoptee.

(6) “Department” means the department of social and health services.

(7) “Agency” means any public or private association, corporation, or individual licensed or certified by the department as a child placing agency under chapter 74.15 RCW or as an adoption agency.

1984 Laws of Washington, Section 8

(1) A parent, 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 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.

(3) A petition for relinquishment, together with the written consent to adoption, may be filed before the child’s birth.

1984 Laws of Washington, Chapter 155, Section 9

- (1) The court shall set a time and place for a hearing on the petition for relinquishment. The hearing may not be held sooner than forty-eight hours after the child's birth. The court may enter a temporary order giving custody of the child to the prospective adoptive parent, if a preplacement report has been filed, or to the department or agency to whom the child will be relinquished pending the court's hearing on the petition.
- (2) Notice of the hearing shall be served on any parent, any alleged father, and the department, agency, or prospective adoptive parent in the manner prescribed by section 31 of this act.
- (3) The court may require the parent to appear personally and enter his or her consent to adoption on the record. The court shall determine that any written consent has been validly executed. 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 section 13 of this act terminating the parent-child relationship of the parent and the child.

1984 Laws of Washington, Chapter 155, Section 10(1)

- (1) A petition for termination of the parent-child relationship of a parent or alleged father who has not executed a written consent to adoption may be filed by:
 - (a) The department or an agency; or
 - (b) The prospective adoptive parent to whom a child has been or may be relinquished if the prospective adoptive parent has filed or consented to a petition for relinquishment.

1984 Laws of Washington, Chapter 155, Section 12(1)

The parent-child relationship of a parent may be terminated upon a showing by clear, cogent, and convincing evidence that it is in the best interest of the child to terminate the relationship and that the parent has failed to perform parental duties under circumstances showing a substantial lack of regard for his or her parental obligations and is withholding consent to adoption contrary to the best interest of the child.

1984 Laws of Washington, Chapter 155, Section 23

(1) After the reports required by section 19 and 20 of this act 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 section 16 of this act, unless the person or agency has waived in writing the right to receive notice of the hearing. Notice shall be given in the manner prescribed by section 31 of this act.

(2) Notice of the adoption hearing shall also be given to any person or agency which has prepared a preplacement report. The notice shall be given in the manner prescribed by section 24 of this act.

(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 section 17 of this act and that the adoption is in the best interest of the adoptee, the court shall enter a decree of adoption pursuant to section 25 of this act.

(4) If the court determines the petition should not be granted because the adoption is not in the best interest of the child, the court shall make appropriate provision for the care and custody of the child.

Statutes from Other States

Arkansas Code Annotated § 9-9-215

(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 biological parents of the adopted individual of all parental rights and responsibilities, and to terminate all legal relationships between the adopted individual and his or her biological relatives, including his or her biological parents, so that the adopted individual thereafter is a stranger to his or her former relatives for all purposes. This includes 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. However, in cases where a biological or adoptive parent dies before a petition for adoption has been filed by a step-parent of the minor to be adopted the court may grant visitation rights to the parents of the deceased biological or adoptive parent of the child if such parents of the deceased biological or adoptive parent had a close relationship with the child prior to the filing of a petition for step-parent adoption, and if such visitation rights are in the best interests of the child. The foregoing provision shall not apply to the parents of a deceased putative father who has not legally established his paternity prior to the filing of a petition for adoption by a step-parent. For the purposes of this section, "step-parent" means an individual who is the spouse or surviving spouse of the biological or adoptive parent of a child but who is not a biological or adoptive parent of the child.

(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.

(b) An interlocutory decree of adoption, while it is in force, has the same legal effect as a final decree of adoption. If an interlocutory decree of adoption is vacated, it shall be as though void from its issuance, and the rights, liabilities, and status of all affected persons which have not become vested shall be governed accordingly.

(c) Sibling visitation shall not terminate if the adopted child was in the custody of the Department of Human Services and had a sibling who was not adopted by the same family and before adoption the circuit court in the juvenile dependency-neglect or families-in-need-of-services case has determined that it is in the best interests of the siblings to visit and has ordered visitation between the siblings to occur after the adoption.

California Probate Code § 6541

(a) An adoption severs the relationship of parent and child between an adopted person and a natural parent of the adopted person unless both of the following requirements are satisfied:

(1) The natural parent and the adopted person lived together at any time as parent and child, or the natural parent was married to or cohabiting with the other natural parent at the time the person was conceived and died before the person's birth.

(2) The adoption was by the spouse of either of the natural parents or after the death of either of the natural parents.

(b) Neither a natural parent nor a relative of a natural parent, except for a wholeblood brother or sister of the adopted person or the issue of that brother or sister, inherits from or through the adopted person on the basis of a parent and child relationship between the adopted person and the natural parent that satisfies the requirements of paragraphs (1) and (2) of subdivision (a), unless the adoption is by the spouse or surviving spouse of that parent.

(c) For the purpose of this section, a prior adoptive parent and child relationship is treated as a natural parent and child relationship.

OCGA § 19-8-19

(a) A decree of adoption, whether issued by a court of this state or by a court of any other jurisdiction, shall have the following effect as to matters within the jurisdiction of or before a court in this state:

(1) Except with respect to a spouse of the petitioner and relatives of the spouse, a decree of adoption terminates all legal relationships between the adopted individual and his relatives, including his parent, 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; and

(2) A decree of adoption creates the relationship of parent and child between each petitioner and the adopted individual, as if the adopted individual were a child of biological issue of that petitioner. The adopted individual shall enjoy every right and privilege of a biological child of that petitioner; shall be deemed a biological child of that petitioner, to inherit under the laws of descent and distribution in the absence of a will, and to take under the provisions of any instrument of testamentary gift, bequest, devise, or legacy, whether executed before or after the adoption is decreed, unless expressly excluded therefrom; shall take by inheritance from relatives of that petitioner; and shall also take as a "child" of that petitioner under a class gift made by the will of a third person.

(b) Notwithstanding the provisions of subsection (a) of this Code section, if a parent of a child dies without the relationship of parent and child having been previously terminated by court order or unrevoked surrender of parental rights to the child, the child's right of inheritance from or through the deceased parent shall not be affected by the adoption.

HRS 578-16

(a) A legally adopted individual shall be considered to be a natural child of the whole blood of the adopting parent or parents as provided in the Uniform Probate Code, relating to the descent of property.

(b) The former legal parent or parents of an adopted individual and any other former legal kindred shall not be considered to be related to the individual as provided in the Uniform Probate Code except as provided in this section.

(c) An adopted individual and the individual's adopting parent or parents shall sustain towards each other the legal relationship of parents and child and shall have all the rights and be subject to all the duties of that relationship, including the rights of inheritance from and through each other and the legal kindred of the adoptive parent or parents, the same as if the individual were the natural child of the adopting parent or parents.

(d) Except as provided in subsection (e), all legal duties and rights between the individual and the individual's former legal parent or parents shall cease from the time of the adoption; provided that if the individual is adopted by a person married to a legal parent of the individual, the full reciprocal rights and duties which theretofore existed between the legal parent and the individual, and the rights of inheritance as between the individual and the legal parent and the legal relatives of the parent, as provided in chapter 560, shall continue, notwithstanding the adoption, subject only to the rights acquired by and the duties imposed upon the adoptive parents by reason of the adoption.

(e) Notwithstanding subsections (b) and (d), if an individual is adopted before that individual attains the age of majority and:

(1) The individual is adopted by a spouse of a natural parent of the individual; or

(2) The individual is adopted by a natural grandparent, aunt, uncle, or sibling of the individual or the spouse of a natural grandparent, aunt, uncle, or sibling;

then for the purposes of interpretation or construction of a disposition in any will, trust, or other lifetime instrument, whether executed before or after the order of adoption, and for purposes of determining heirs at law,

the rights of the adopted individual and the individual's descendants with respect to the individual's natural family shall not be affected by the adoption, and they shall be included in any determination of heirs or members of any class, unless specifically excluded by name or class.

(f) An adopted individual, who by reason of subsection (e) would be a member of two or more designations or classes pursuant to a single instrument, both by relationship through a natural parent and through an adoptive parent, shall be entitled to benefit by membership in only one of these designations or classes, which shall be the larger share.

(g) For purposes of this section, if a person has been adopted more than once, the term "natural parent" includes an adopting parent by an earlier adoption.

(h) An individual legally adopted under the laws of any state or territory of the United States or under the laws of any nation shall be accorded the same rights and benefits in all respects as an individual adopted under this chapter.

NCGSA § 48-1-106

(a) A decree of adoption effects a complete substitution of families for all legal purposes after the entry of the decree.

(b) A decree of adoption establishes the relationship of parent and child between each petitioner and the individual being adopted. From the date of the signing of the decree, the adoptee is entitled to inherit real and personal property by, through, and from the adoptive parents in accordance with the statutes on intestate succession and has the same legal status, including all legal rights and obligations of any kind whatsoever, as a child born the legitimate child of the adoptive parents.

(c) A decree of adoption severs the relationship of parent and child between the individual adopted and that individual's biological or previous adoptive parents. After the entry of a decree of adoption, the former parents are relieved of all legal duties and obligations due from them to the adoptee, except that a former parent's duty to make past-due payments for child support is not terminated, and the former parents are divested of all rights with respect to the adoptee.

(d) Notwithstanding any other provision of this section, neither an adoption by a stepparent nor a readoption pursuant to G.S. 48-6-102 has any effect on the relationship between the child and the parent who is the stepparent's spouse.

(e) In any deed, grant, will, or other written instrument executed before October 1, 1985, the words "child", "grandchild", "heir", "issue", "descendant", or an equivalent, or any other word of like import, shall be held to include any adopted person after the entry of the decree of adoption, unless a contrary intention plainly appears from the terms of the instrument, whether the instrument was executed before or after the entry of the decree of adoption. The use of the phrase "hereafter born" or similar language in any such instrument to establish a class of persons shall not by itself be sufficient to exclude adoptees from inclusion in the class. In any deed, grant, will, or other written instrument executed on or after October 1, 1985, any reference to a natural person shall include any adopted person after the entry of the decree of adoption unless the instrument explicitly states that adopted persons are excluded, whether the instrument was executed before or after the entry of the decree of adoption.

(f) Nothing in this Chapter deprives a biological grandparent of any visitation rights with an adopted minor available under G.S. 50-13.2(b1), 50-13.2A, and 50-13.5(j).

Wis. Stat. § 48.92

(1) After the order of adoption is entered the relation of parent and child and all the rights, duties and other legal consequences of the natural relation of child and parent thereafter exists between the adopted person and the adoptive parents.

(2) After the order of adoption is entered the relationship of parent and child between the adopted person and the adopted persons birth parents and the relationship between the adopted person and all persons whose relationship to the adopted person is derived through those birth parents shall be completely altered and all the rights, duties, and other legal consequences of those relationships shall cease to exist, unless the birth parent is the spouse of the adoptive parent, in which case those relationships shall be completely altered and those rights, duties, and other legal consequences shall cease to exist only with respect to the birth parent who is not the spouse of the adoptive parent and all persons whose relationship to the adopted person is derived through that birth parent. Notwithstanding the extinction of all parental rights under this subsection, a court may order reasonable visitation under s. 48.925.

(3) Rights of inheritance by, from and through an adopted child are governed by ss. 854.20 and 854.21.

(4) Nothing in this section shall be construed to abrogate the right of the department to make payments to adoptive families under s. 48.48 (12).

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

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 Saludaes
Caron, Colven, Robison & Shafton
900 Washington Street, Suite 1000
Vancouver, WA 98660
(360) 699-3001

FILED
COURT OF APPEALS
DIVISION II
2016 SEP 16 AM 9:22
STATE OF WASHINGTON
BY  DEPUTY

COMES NOW Ben Shafton and declares as follows:

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 September 15, 2016, I sent the Brief of Appellant 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

I DECLARE UNDER PENALTY OF PERJURY AND THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

DATED at Vancouver, Washington, this 15 day of September, 2016.



BEN SHAFTON