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NO. 99462-5

**SUPREME COURT OF THE STATE OF WASHINGTON**

In re the Estate of CALVIN T. RAY, a/k/a CALVIN THOMAS RAY JR.
and TOD RAY,

MARK D. STINE,

Petitioner,

v.

WASHINGTON STATE DEPARTMENT OF REVENUE,

Respondent.

# ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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## I. INTRODUCTION

Petitioner Mark Stine seeks to inherit from his stepfather, Calvin Ray, who passed in 2011 without a will and without heirs. Mark Stine is not a lawful heir of Calvin Ray. Nevertheless, he asserts that he should be allowed to inherit based on his views of equity and what he terms as a "non-literal approach" to Washington's intestate succession laws. The Court of Appeals disagreed and followed the "literal" approach to intestate succession adopted by our Legislature and followed by our courts. *See Matter of Estate of Calvin T. Ray*, No. 79904-5-I, 2020 WL 7867280 (Nov. 9, 2020) (copy attached as Appendix A).

The key statute for purposes of this appeal is RCW 11.04.095, which provides a limited avenue for a stepchild to inherit from an intestate decedent. *See* RCW 11.04.095 (copy attached as Appendix B). Stine does not meet the necessary elements of that statute, and he presents no compelling reason for this Court to accept review and apply his proposed "non-literal" application of that statute. Importantly, a non-literal application of legislatively enacted statutes would be inconsistent with the long line of precedent requiring courts to apply the plain language of unambiguous statutes. Carving out an exception in this appeal would not advance the rule of law or any public interest, and would serve to benefit the financial interests of only one person—Mark Stine.

Moreover, Stein's plea for this Court to expand the de facto parent doctrine does not raise an issue of substantial public interest. Mark Stein moved out of the family home in 1989 at the age of 21, and was in his mid-forties when Calvin Ray passed in 2011. His interest in expanding the doctrine of de facto parent is purely financial. It has nothing to do with *parenting*. And there is no public benefit to expanding the de facto parent doctrine to allow courts to reformulate the relationship between stepparents and stepchildren years after that relationship has ended, the stepparent had died, and the stepchild has become a self-sufficient adult. Consequently, this Court should deny the petition of discretionary review.

## II. COUNTERSTATEMENT OF THE ISSUES

1. RCW 11.04.095 allows a stepchild to inherit a stepparent's estate under limited circumstances, where the natural parent dies first and leaves their estate to the stepparent. Should the Court apply RCW 11.04.095 beyond its plain language to avoid escheat whenever a stepparent dies intestate, thus permitting Stine to inherit from Calvin Ray?

2. This Court has recognized the de facto parent doctrine in the context of determining parentage rights. Should the Court expand this doctrine to grant decedent Calvin Ray the posthumous status of Mark Stine's de facto parent, and modify the current intestate succession laws in a manner that would permit Stine to inherit from Ray?

## III. COUNTERSTATEMENT OF THE CASE

When Mark Stine was 10 years old, his mother, Nancy Skinner, married Calvin Ray. *Matter of Estate of Calvin T. Ray*, slip op. at 2. Mark Stine recalls a happy childhood, and his mother recalls that Calvin Ray was a caring stepfather. CP 41; CP 44. Mark Stine moved out of the family home in 1989 at the age of 21. *Estate of Ray*, slip op. at 2; CP 41. Shortly thereafter, Nancy Skinner and Calvin Ray dissolved their marriage. *Estate of Ray*, slip op. at 2. Calvin Ray never sought to adopt Stine. *Id*.

Calvin Ray died in April 2011. *Estate of Ray*, slip op. at 2. He passed without a will and without heirs. *Id*.[1] Because Mr. Ray had no will and no heirs, his entire estate totaling $3,650,000 passed to the State of Washington under the State's escheat statute, to be deposited into the common school construction fund to help fund education. CP 145.

Several years after the completion of all probate proceedings pertaining to Calvin Ray's estate, Mark Stine filed a postprobate petition in King County Superior Court seeking to obtain the entire $3,650,000 that had passed to the State. *Estate of Ray*, slip. op. at 2. Although Stine did not cite to any statute permitting his postprobate legal action, he likely was

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[1] Mr. Ray and Stine's mother divorced in 1990 and Mr. Ray did not remarry. CP 45. Mr. Ray had no children of his own, and had no other legal heirs when he died. *Id*.

relying on RCW 11.08.230 and .240, which allow an heir of an intestate decedent to petition for recovery of escheat funds.

The Department of Revenue appeared in Stine's postprobate action and moved for summary judgment based on the undisputed fact that Stine was not a lawful heir of Calvin Ray. *Estate of Ray*, slip op. at 2. The trial court granted the motion, and Stine appealed to the Court of Appeals. *Id.*

In his appeal, Stine argued that the court should broadly apply RCW 11.04.095 to allow stepchildren to inherit in all cases where the alternative was for the decedent's estate to escheat. According to Stine, the court was authorized to treat him as Calvin Ray's heir and grant him the escheated funds he was seeking based on a "broadened understanding of what constitutes a 'family,'" coupled with the "underlying purpose" of Washington's probate code. *Id.* at 4-5. Stine also argued that he was entitled to the escheated funds based on the equitable doctrines of de facto parent and de facto adoption.[2]

The Court of Appeals rejected all of Stine's arguments, holding that they were contrary to established law. Dismissing Stine's primary contention that stepchildren should be treated as heirs if the alternative was escheat, the Court of Appeals explained that "[a] general policy disfavoring

[2] Stine appears to have dropped his de facto adoption claim. *See* Pet. at 5 (statement of issues, none of which pertain to de facto adoption).

escheat does not mean that the legislature intended that escheat will never occur under any circumstances. On the contrary, the legislature provides for intestate escheat expressly under Title 11 RCW, barring exceptional circumstances outlined in statutes such as RCW 11.04.095." *Id*. at 7 (emphasis in original).

Because Stine was not an heir of Calvin Ray, and because his equitable arguments lacked merit, the Court of Appeals affirmed the trial courts grant of summary judgment to the Department. *Id*. at 12.

## IV. REASONS WHY REVIEW SHOULD BE DENIED

This Court should deny review because the Court of Appeals opinion involves nothing more than a straightforward application of the undisputed facts to the plain language of RCW 11.04.095. Nothing in the Court of Appeals' analysis and application of the law warrants further review. Importantly, Stein concedes that he is not entitled to inherit under the plain language of that statute. Moreover, he has not pointed to any ambiguity in the language the Legislature used to provide a limited avenue for stepchildren to inherit when a stepparent dies intestate. Instead, Stein presents policy arguments for modifying the law—arguments that should be directed to the Legislature and not the courts. Stein's policy arguments do not present an issue of substantial public interest requiring judicial

modification of the statutory scheme our Legislature has enacted to determine when a stepchild may inherit.

### A. The Court Of Appeals Correctly Applied the Plain Language of RCW 11.04.095 and This Court's Precedent

The distribution of property of an intestate decedent is controlled by the provisions of RCW 11.04.015 and related statutes. In general (and as relevant here), if an intestate individual dies without leaving a surviving spouse or domestic partner, the net estate is distributed to the decedent's "issue." RCW 11.04.015(2)(a). The term "issue" is defined as "all the lineal descendants of an individual" including an "adopted individual." RCW 11.02.005(8). Stepchildren are not issue of a stepparent and are not entitled to any distribution of an intestate decedent's estate except in the limited circumstance provided in RCW 11.04.095.

As noted by the Court of Appeals, RCW 11.04.095 "provides a narrow set of conditions under which stepchildren may inherit intestate from their stepparents." *Estate of Ray*, slip op. at 4. That statute provides in relevant part:

> 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[.]

RCW 11.04.095.[3]

Although the statute is long, it sets out several clear requirements. First, the stepchild's parent must die leaving a surviving spouse or domestic partner. Second, the predeceased parent must leave substantially all of his or her property to the surviving spouse or domestic partner. Third, the surviving spouse or surviving domestic partner must die without a will and without heirs. Only then may the "issue of the spouse or domestic partner first deceased" inherit from the unrelated spouse or domestic partner. And even then, inheritance is limited to the property or its equivalent that was "acquired by will or conveyance" by the second spouse or domestic partner from the first.

The Court of Appeals properly summarized the statute, explaining that "where the natural parent dies first, and their property is transferred to a stepparent, this statute provides a way for property of the natural parent to

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[3] RCW 11.04.095 is almost identical to a prior statute, former RCW 11.08.010, that was repealed in the same act that created RCW 11.04.095. *See* Laws of 1965, ch. 145, § 11.99.015(50) (repealing former RCW 11.08.010); *see generally In re Smith's Estate*, 49 Wn.2d 229, 232, 299 P.2d 550 (1956) (discussing former law and holding that "[t]he right of a stepchild to inherit from a stepparent is limited to the circumstances outlined therein").

return to the stepchild upon the death of an otherwise intestate stepparent." *Estate of Ray*, slip op. at 4. Stine does not meet the statute's requirements "since his mother did not predecease Ray." *Id*. at 7.[4]

Stine does not contend that his circumstance fits within the plain language or purpose of RCW 11.04.095. Instead, he argued below that a stepchild who does not fit within the express circumstances outlined in the statute should nonetheless inherit *all* of the stepparent's estate if the alternative is for the estate to escheat to the State. The Court of Appeals correctly rejected the argument, explaining that the Legislature has not enacted any "change[] in policy" supporting a broad right of stepchildren to inherit from an intestate stepparent to "avoid escheat." *Estate of Ray*, slip op. at 6. To the contrary, Washington law expressly requires property to pass to the State under the circumstances of this case. *See* RCW 11.08.140 (escheat statute).[5]

Moreover, this Court has previously upheld the Legislature's policy choice that stepchildren may inherit from an intestate decedent only when allowed by statute. *Klossner v. San Juan Cty.*, 93 Wn.2d 42, 47, 605 P.2d 330 (1980). The Court of Appeals did not err in rejecting Stine's efforts to

[4] Stine's mother, Nancy Skinner, is not deceased. CP 44.

[5] Property that escheats to the State is used to help fund education. *See* RCW 28A.515.300(1) (proceeds of lands and other property that escheat to the state are deposited into the permanent common school fund). Thus, the funds at issue in this litigation further the important societal goal of funding education.

forge a different set of rules for his benefit. *See Estate of Ray*, slip op. at 7 (any general policy disfavoring escheat "does not mean that the legislature intended that escheat will never occur under any circumstances").

The Court of Appeals also correctly rejected Stine's other arguments. Specifically, Stine's argument that Calvin Ray was his de facto father was incorrect as a matter of law. As this Court has noted, the purpose for adjudicating a person to be a de facto parent is to permit that person an avenue to seek custody, visitation, or similar parental rights upon a showing that it is in the best interests of the child to grant those rights. *In re Parentage of L.B.*, 155 Wn.2d 679, 694 n.10, 122 P.3d 161 (2005); *id*. at 708-09. Mark Stine is a middle-aged adult. He moved out of his mother and stepfather's home in 1989 at the age of 21. CP 41. His interests in this case are purely financial and have nothing to do with parenting.

Moreover, "an individual must be alive at the time a parentage action is commenced, and must claim to be the de facto parent of a minor child while the child is alive." *Estate of Ray*, slip op. at 10 (citing RCW 26.26A.440(1)-(2)). Neither of those circumstances exist here, and the Court of Appeals did not err when it declined to "expand the doctrine of de facto parentage to cover the circumstances of this dispute." *Id*. at 11.[6]

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[6] Even if Calvin Ray was adjudicated to be Stine's de facto father, that ruling would not entitle Stine to inherit. The "issue" of an intestate decedent entitled to inherit under RCW 11.04.015(2)(a) is limited to lineal descendants and adopted individuals. Mark

Additionally, Stine's argument that he was Ray's adopted child under the doctrine of de facto adoption was incorrect as a matter of law. *Id*. at 11-12. Under Washington law, adoption requires strict compliance with proscribed statutes. *Smith's Estate*, 49 Wn.2d at 235. Washington courts have followed this principle since early statehood. *In re Renton's Estate*, 10 Wash. 533, 39 P. 145 (1895). In *Renton's Estate*, this Court expressly rejected the notion of a common law adoption, holding that "without compliance with a statute, there is no such thing in our law as the adoption of an heir. Adoption was not known to the common law, and is a matter purely statutory." *Id.* at 542.

Stine never mentions *Renton's Estate* in his Petition for Review. He nevertheless argues that the Court of Appeals placed undue weight on "old cases on which [the Department] relied, all of which predate the wholesale revisions to the Probate Code in 1965 . . . ." Pet. at 15. Without naming these "old cases," Stine contends that they are inconsistent with the "underlying purpose" of the 1965 revisions to the Washington probate code and with "our current societal norms." *Id*. Continuing with this theme, Stine argues that "[t]his Court should grant review to give direction for applying

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Stine is not a lineal descendant of Calvin Ray and has not been adopted by Mr. Ray. These undisputed facts do not change if Calvin Ray is posthumously granted the status of Stine's de facto father.

the revised Probate Code consistent with its underlying purpose and our current societal norms for future cases." *Id*.

Contrary to Stine's contention, there is no evidence or authority suggesting that probate and intestacy cases decided by this Court prior to 1965 are outdated, or that lower courts require "direction" on which of this Court's decisions should be followed and which should not. To the contrary, this Court has been clear that its decisions remain binding until they are overruled. *1000 Virginia Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 578, 146 P.3d 423 (2006). This policy supports "current societal norms" by providing stable and reliable guidance to the courts, litigants, and the public.

Adherence to precedent is "a foundation stone of the rule of law" because it "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Kisor v. Wilkie*, ___ U.S. ___, 139 S. Ct. 2400, 2422, 204 L. Ed. 2d 841 (2019) (quoting *Payne v. Tennessee*, 501 U.S. 808, 827, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991)). If Stine is unhappy with this Court's prior decisions, he can make a good faith argument that they are "incorrect and harmful," or based on "legal underpinnings" that have "changed or disappeared altogether," and should be overruled. *State v. Otton*, 185 Wn.2d 673, 678, 374 P.3d 1108 (2016). He has not done so here; at least not

directly. *See* Pet. at 11-17 (no argument asking the Court to overrule a specific case). Instead, he makes only a general accusation that pre-1965 cases "should not control the reality of the dramatically changed family landscape . . . ." Pet. at 12.

Notwithstanding Stine's general dissatisfaction with current law or with the Court of Appeal's reliance on "old cases," he simply has not raised any issue of substantial public interest requiring this Court's attention. As this Court previously held in *Klossner*, the Legislature has made a policy choice that stepchildren may not inherit from an intestate decedent except in the limited circumstance provided under RCW 11.04.095. *Klossner*, 93 Wn.2d at 47. That policy choice deserves respect. While Stine may wish the laws were different, his remedy lies with the Legislature, not the courts. *See id*. ("the extension of rights to step-children in Washington has been accomplished heretofore by the legislature, not by this court" and when the Legislature acts it "has imposed careful limits on those rights"). Stine presents no compelling reason for this Court to grant review and revisit the policy choices made by the legislative branch.[7]

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[7] The Department moved to publish the Court of Appeals' decision because it provides a useful precedent pertaining to intestate succession, the proper application of RCW 11.04.095, and the law of escheat. However, publication of the decision does not somehow elevate the case to one of substantial public importance. To the contrary, the Court of Appeals based its analysis on time-honored legal principles, plain statutory language, and established legislative policy. Nothing in the decision warrants further review.

## B. Stine's Statutory Construction Arguments do not Warrant Review

The central theme of Stine's petition for review is that this Court should side-step the plain language of RCW 11.04.095 and apply that statute in a non-literal manner. More specifically, Stine is asking the Court to (1) accept his assertion that Calvin Ray intended for Stine to inherit his entire estate and (2) modify the plain language of any statute that stands in the way of that purported intent. Pet. at 13-14. The Court of Appeals properly declined Stine's invitation to modify RCW 11.04.095, and its published decision does not warrant further review.

A stable and predictable system of laws is a touchstone of the rule of law. *Kisor*, 139 S. Ct. at 2422. To help advance the predicable application of Washington's laws, courts apply the plain language of controlling statutes. *Ass'n of Wash. Bus. v. Dep't of Ecology*, 195 Wn.2d 1, 10, 455 P.3d 1126 (2002). "When 'the statute's meaning is plain on its face, [we] must give effect to that plain meaning.'" *Id.* (quoting *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2020)). Courts discern the plain meaning from the words of the statute and related statutes, the context of the statute, and "the statutory scheme as a whole." *Id*. (quoting *State v. Engel*, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009)).

Stine's proposed "non-literal" approach to statutory interpretation is not consistent with this Court's precedent. Moreover, this case does not present a circumstance where the Legislature left gaps in the controlling statutes. Instead, the Legislature enacted a specific statute that allows property to escheat to the state (RCW 11.08.140) and a specific and limited exception allowing stepchildren to inherit to avoid escheat (RCW 11.04.095). There is no ambiguity in the statutory language and no call for this Court or any court to apply the law in a non-literal manner.

Additionally, as the Court of Appeals correctly held, Stine put misplaced reliance on *In re Estate of Little*, 106 Wn.2d 269, 721 P.2d 950 (1986). *See Estate of Ray*, slip op. at 6-7 (discussing and distinguishing *Estate of Little*). In that case, this Court analyzed Washington's intestate succession laws pertaining to "ancestral" real property. *Estate of Little*, 106 Wn.2d at 270. Specifically, the court was asked to "ascertain the meaning of the descent and distribution statute (RCW 11.04.015) and the ancestral estate statute (RCW 11.04.035), as they relate to each other." *Id*. at 283. To determine the correct distribution of the real property at issue, the Court looked to established rules of statutory construction, concluding that the more specific ancestral estate statute controlled over the less specific descent and distribution statute. *Id.* at 284. Stine does not point to a more specific statute in this appeal that would grant him a right to inherit from

Calvin Ray. Therefore, the holding and analysis in *Estate of Little* is of no help to him here.

To summarize, there is no legal or equitable reason for this Court to rewrite the probate code to benefit Mark Stine. Instead, as was the case in *Klossner*, modification of the law to enhance the rights of stepchildren should be left to the Legislature. *Klossner*, 93 Wn.2d at 47.

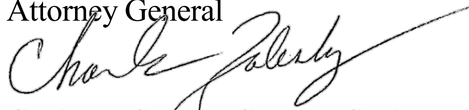
Stine also argues that "[t]his Court should accept review to provide a full analysis of the effect of the underlying intent of the intestate statutes for the benefit of the Bench, the Bar, and the public." Pet. at 11. But it is not the role of this Court to accept review of every case in which a litigant feels slighted by the analysis or outcome of its case as decided by the Court of Appeals. Moreover, the Court of Appeals did provide a "full analysis" of Stine's legal claims, explaining that they do not pass muster under the express language of RCW 11.04.095 or under settled law pertaining to de facto parenting and adoption. Because Stine's arguments were all contrary to law, there was no need for the Court of Appeals to comment on the "underlying intent" of Washington's intestate succession statutes. And there is no basis for this Court to accept review in order to provide Stine with the "full analysis" he contends is missing from the Court of Appeals decision.

## V. CONCLUSION

The Court of Appeals decision applied the plain language of the State's intestate succession laws to the undisputed facts in the record. The decision raises no issue of constitutional law or of substantial public interest, and does not conflict with any decision from any court. Consistent with RAP 13.4(b), this Court should deny review.

RESPECTFULLY SUBMITTED this 17th day of February, 2021.

ROBERT W. FERGUSON
Attorney General



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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 17th day of February 2021 at Olympia, WA.

*s/Charles Zalesky*
Charles Zalesky, Assistant Attorney General

# APPENDIX A

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REVENUE AND FINANCE DIVISION

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11/09/2020

# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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| In the Matter of the Estate of<br><br>CALVIN T. RAY, a/k/a CALVIN THOMAS RAY JR. and TOD RAY.<br><br>MARK D. STINE,<br><br>Appellant,<br><br>v.<br><br>WASHINGTON STATE, DEPARTMENT OF REVENUE,<br><br>Respondent. | No. 79904-5-I<br><br>DIVISION ONE<br><br>UNPUBLISHED OPINION |

APPELWICK, J. — Stine appeals from an order granting summary judgment for and dismissing claims against the Washington State Department of Revenue. Stine contends the trial court erred in determining he had no legal right to inherit intestate from his stepfather, Calvin T. Ray, Jr. Stine argues this court should interpret RCW 11.04.095 to grant him the right of inheritance. Alternatively, he argues the court should use its equitable powers to allow him to inherit Ray's estate by holding that he was de facto adopted by Ray, or that Ray was Stine's de facto father. We affirm.

## FACTS

On April 5, 2011, Calvin T. Ray, Jr., passed away. Ray died intestate without being survived by any person entitled to his estate under Washington law. Ray was a resident of the State of Washington at the time of his death. Mark Stine was his only stepchild

Stine's mother, Nancy Skinner, married Ray when Stine was 10. Stine, Skinner, and Ray lived together in the same home until Stine left home at the age of 21. Skinner and Ray dissolved their marriage on January 3, 1990. Ray and Stine remained close after the dissolution of his marriage to Ray's mother. Counsel for Stine declared that Ray expressly stated to several individuals his intent to make Stine his beneficiary. Ray never formally adopted Stine.

On March 27, 2012, the King County Superior Court issued a final order in probate directing his estate escheat to the State of Washington. The Washington Department of Revenue (DOR) holds Ray's estate, which totaled $3,650,000 in 2018. In July 2018, Stine filed a postprobate petition in King County Superior Court for a determination of his right to inherit. Stine asserted two legal theories in his petition. First, he claimed that he was entitled to inherit under RCW 11.04.095, which provides limited circumstances by which stepchildren may inherit intestate. Second, he argued that the court should rule that he was de facto adopted by Ray. The DOR moved to dismiss. In November 2018, the court ordered the parties to first proceed to mediation under RCW 11.96A.300. Mediation was unsuccessful.

The DOR then moved for summary judgment. On March 29, 2019, the trial court granted the motion for summary judgment and dismissed the action.

Stine appeals.

## DISCUSSION

This court reviews summary judgment rulings de novo. Activate, Inc. v. Dep't of Revenue, 150 Wn. App. 807, 812, 209 P.3d 524 (2009). Summary judgment is appropriate if the record shows there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Anica v. Wal-Mart Stores, Inc., 120 Wn. App. 481, 487, 84 P.3d 1231 (2004). A material fact is one upon which the outcome of the litigation depends. Clements v. Travelers Indem. Co., 121 Wn. 2d 243, 249, 850 P.2d 1298 (1993). The court must consider the facts submitted and all reasonable inferences from those facts in the light most favorable to the nonmoving party. Id. The motion should be granted only if, from all the evidence, reasonable persons could reach but one conclusion. Cochran Elec. Co. v. Mahoney, 129 Wn. App. 687, 692, 121 P.3d 747 (2005).

### I. RCW 11.04.095

Whether Stine should inherit under RCW 11.04.095 is a legal question that this court reviews de novo. See Bank of Am., NA v. Prestance Corp., 160 Wn.2d 560, 564, 160 P.3d 17 (2007) (holding whether equitable relief is appropriate is a question of law).

Intestate succession is governed by Washington's general descent and distribution statute. RCW 11.04.015. Where a person dies intestate with no surviving spouse or domestic partner, their estate descends next to their issue. RCW 11.04.015(2)(a). "Issue" is defined under Title 11 RCW to include all lineal

descendants, including adopted individuals. RCW 11.02.005(8). “Stepchildren” are not expressly included within the definition of “issue.” See id. If an individual dies intestate and is not survived by anyone entitled to their estate, their property escheats to the State. RCW 11.08.140. RCW 11.04.095 provides a narrow set of conditions under which stepchildren may inherit intestate from their stepparents. Stine asserts this court should interpret RCW 11.04.095 to allow him to inherit Ray’s estate, in keeping with the policy underlying RCW 11.04.095.

The language of RCW 11.04.095 lays out several requirements which must be met for a stepchild to inherit intestate. First, the stepchild’s parent must predecease the surviving stepparent. Id. Second, substantially all of the parent’s property must pass to the surviving stepparent either in death or conveyed before death. Id. Third, the stepparent subsequently dies intestate resulting in escheat but for inheritance by the stepchild. Id. Thus, where the natural parent dies first, and their property is transferred to a stepparent, this statute provides a way for property of the natural parent to return to the stepchild upon the death of an otherwise intestate stepparent.

Stine asks this court to interpret RCW 11.04.095 broadly to include his circumstances “consistent with the underlying purpose of the code” and broadened understandings of what constitutes “family.”

A. Evolution of Washington Probate Law

First, Stine argues probate law has moved beyond anachronistic bloodline conceptions of property inheritance. Stine highlights the enactment of RCW 11.04.095 as part of a comprehensive probate code revision in 1965. He cites to

a law review article discussing the Legislature's repudiation of the "'anachronistic doctrine of ancestral property.'" (Quoting Robert A. Stewart & John R. Steincipher, Probate Reform in Washington, 39 WASH. L. REV. 873, 878-879 (1965)). However, Stine does not provide any caselaw in which the court has used the 1965 probate reforms to assign more inclusive meaning to an eligible class of takers under current probate statutes.

Stine highlights several other shifts in probate law, such as changes to antiquated notions of "legitimacy" in defining children. Here, Stine relies on In re Matthias' Estate, 63 F. 523, 525 (C.C.D. Wash. 1894). Matthias' Estate did not address the question of law in this case, but concerned the third section of "'[a]n act in relation to marriage,'" which expressly provided "'all children born of persons living and cohabiting together, as man and wife'" were eligible to inherit. Id. (quoting LAWS OF 1854, p. 404). The question before the court was whether the plaintiff's parents, who never legally wed, lived together as man and wife. Id. The court did not interpret the statute beyond its plain language to reach its conclusion. Id.

Additionally, Stine argues the recognition of stepchildren as beneficiaries under taxation provisions and in wrongful death actions evidences a legislative intent for stepchildren to inherit. Stine cites In re Estate of Bordeaux, 37 Wn.2d 561, 594, 225 P.2d 433 (1950), which recognized stepchildren as belonging to the same class as natural children for purposes of inheritance taxation. However, the relevant inheritance tax statute specifically designated that any "'child or stepchild'" of the deceased belong to class A for determining rates of taxation. Id. at 562-63

(emphasis omitted) (quoting Rem. Supp. 1943, § 11202, P.P.C. § 974-21). Here, "stepchild" is not expressly provided in the language of RCW 11.04.095. Similarly, stepchildren are now entitled to recover in wrongful death actions, but Stine himself concedes this change occurred through statutory reform.

Additionally, Stine contends that amendments to Title 11 RCW recognizing increased rights of nontraditional heirs and domestic partnerships are evidence of the legislature's desire for broadened interpretations of Title 11 RCW. But, again, these changes also evidence the legislature's ability to amend Title 11 RCW to comport with its new policy positions.

Had the legislature intended to make stepchildren equivalent to children in all instances of intestate law, it could have simply amended the definition of "issue" in RCW 11.02.005(8) to include "stepchildren," but it has not. To this point, the DOR cites to In re Estate of Henry, 189 Wash. 510, 513-14, 66 P.2d 350 (1937), detailing the legislature's modification of Washington's former inheritance tax code to classify both "children" and "stepchildren" as the same class of beneficiaries. If Title 11 RCW is inconsistent with trends in escheat or expanding notions of family, it is for the Legislature to enact changes in policy.

B. Policy Disfavoring Escheat in Washington

Next, Stine contends escheat is disfavored in Washington. He cites In re Estate of Little, 106 Wn.2d 269, 284, 721 P.2d 950 (1986), to support his claim. This case is distinguishable from Little. That case concerned a dispute between two groups of potential heirs over the estate of an intestate decedent. Id. at 281. Reading Washington's general descent and distribution statute and its ancestral

estate statute literally, their rights to inherit extinguished each other, resulting in escheat under RCW 11.08.140. See Little, 106 Wn.2d at 283-84. The court held the legislature could not have intended for those two statutes to conflict, resulting in escheat. Id. at 284. Therefore, the court gave preference to the more specific ancestral estate statute. Id.

Here, there is no dispute between two groups of potential heirs or two conflicting statutes. Additionally, the outcome of Little, 21 years after the 1965 probate code reforms, highlights the enduring recognition of bloodlines and ancestral property. Robert A. Stewart & John R. Steincipher, Probate Reform in Washington, 39 WASH. L. REV. 873, 878-879 (1965). This rebuts Stine's earlier arguments regarding the evolution of Washington probate law.

A general policy disfavoring escheat does not mean the legislature intended that escheat will never occur under any circumstances. On the contrary, the legislature provides for intestate escheat expressly under Title 11 RCW, barring exceptional circumstances outlined in statutes such as RCW 11.04.095.

C. Plain Language of Statute

Stine concedes that, under the plain language of the statute, he does not meet the first two statutory requirements since his mother did not predecease Ray. Only the third statutory requirement, that Stine's stepparent subsequently died intestate resulting in escheat but for inheritance by the stepchild, is present here. RCW 11.04.095(3). Stine does not cite caselaw in which a court has interpreted RCW 11.04.095 to allow for inheritance in similar circumstances.

Still, he argues this court should interpret the statute to allow him to inherit "consistent with other state statutes and caselaw and the unstoppable evolution of society's view of family." He contends "[i]t is a natural and logical progression for the [c]ourt to equitably fill this statutory gap." For this assertion, he cites In re Parentage of L.B., 121 Wn. App. 460, 475-476, 89 P.3d 271 (2004), rev'd in part on other grounds, 155 Wn.2d 679, 122 P.3d 161 (2005). The L.B. court recognized its ability to grant common law remedies where they are not preempted by legislation. 121 Wn. App. at 476 n.2. But, the court also clearly stated "unambiguous statutes are not open to judicial interpretation." Id. at 473.

The plain meaning rule directs courts to apply words per the meaning they are ordinarily given. Dep't of Ecology v. Campbell & Gwinn, LLC, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). It is unnecessary to resort to aids of construction where a statute is unambiguous. See Id. at 12. In recognition of separation of powers, courts "should resist the temptation to rewrite an unambiguous statute to suit our notions of what is good public policy." State v. Jackson, 137 Wn.2d 712, 725, 976 P.2d 1229 (1999). Where a statutory mandate exists, courts will not employ equitable principles in derogation of that mandate. See Rhoad v. McLean Trucking Co., Inc., 102 Wn.2d 422, 427, 686 P.2d 483 (1984). This court has declined to judicially modify a statutory child support scheme where a partner did not formally adopt the child. State ex rel. D.R.M v. Wood, 109 Wn. App. 182, 194-95, 34 P.3d 887 (2001).

Here, there is no gap in the statute. This court does not need to look further than the plain language of the statute. A stepparent has clear options to ensure

their stepchild inherits their estate. Here, the legislature has expressly carved out limited exceptions to a bar on intestate inheritance by stepchildren with RCW 11.04.095.

It may be true, as Stine contends, that his stepfather Ray always intended that he would be his heir. But, Ray never pursued any of the available instruments to ensure succession. The legislature enacted a narrowly-tailored intestate exceptions for stepchildren, rather than add stepchildren to the definition of issue. Neither general policy considerations nor evidence of the likely intentions of the decedent are a sufficient basis to override clear legislative policy in the name of equity.

D. RCW 11.04.095's Section Heading

Finally, Stine argues the "title" of the statute, "Inheritance from stepparent avoids escheat," indicates the legislature's intent to broadly extend inheritance rights to stepchildren as well as its general disfavoring of escheat under RCW 11.04.095. This argument lacks merit.

Stine relies on Klossner v. San Juan County, 93 Wn.2d 42, 47, 605 P.2d 330 (1980), which described RCW 11.04.095, to assert that "[w]ith this statute, the legislature has extended inheritance rights to stepchildren when the property would otherwise escheat to this state." But, this statement was to distinguish the wrongful death statute at issue in Klossner, which unlike RCW 11.04.095, was silent with regards to stepchildren. Id. Additionally, Klossner cites RCW 11.04.095 to evidence how enhancements of stepchildren's rights have come by statute and have been narrow in scope. Id. at 46-47.

Further, RCW 11.04.095's section heading has no relevance to this case. Where a statute is ambiguous, section headings enacted as a part of the act may assist in determining legislative intent, but they do not control the plain meaning. See State v. Lundell, 7 Wn. App. 779, 781-82, 503 P.2d 774 (1972). These headings are only relevant if "they are placed in the original act by the legislature without any limiting provisions." Id. at 782 n.1. Here, the statute is unambiguous, so section headings are not needed to determine legislative intent. Additionally, the "title" Stine cites is the section heading for RCW 11.04.095. And, Title 11 RCW contains an express limiting provision stating section headings within Title 11 RCW do not constitute any part of the law. RCW 11.02.001.

We hold that Stine is not permitted to inherit Ray's estate under RCW 11.04.095.

II. Ray As Stine's De Facto Father

In the alternative, Stine argues that Ray was his de facto father. A lawfully adopted child is entitled to all rights of a natural child with regards to the adoptive parent, including rights of inheritance. RCW 26.33.260. Whether to assign equitable relief is a legal question, and as such, review is de novo. Niemann v. Vaughn Cmty. Church, 154 Wn.2d 365, 374, 113 P.3d 463 (2005); Norean Builders, LLC v. GMP Homes VG, LLC, 161 Wn. App. 474, 483, 254 P.3d 835 (2011).

An individual must be alive at the time a parentage action is commenced, and must claim to be the de facto parent of a minor child while the child is alive. RCW 26.26A.440(1)-(2). Here, Ray is deceased, Stine is not a minor child, and

Stine does not argue that Ray was ever adjudicated to be Stine's de facto parent. Stine argues that Ray was never adjudicated as such because such claims only arise during familial disputes, of which there were none here. Yet, that is precisely why this doctrine is inapplicable to the facts of this dispute. De facto parentage was never designed as an equitable relief for children to establish rights of inheritance. The statutory requirement that both parties be alive at commencement evidences the doctrine's inapplicability to probate law.

This court declines to expand the doctrine of de facto parentage to cover the circumstances of this dispute.

III. De Facto Adoption

Stine also argues in the alternative this court should utilize its equitable powers to hold that he was de facto adopted by Calvin Ray. Stine asserted this theory in his postprobate petition.

De facto adoption, also referred to as "equitable adoption" or "adoption by estoppel" is a common law doctrine entitling a person to the same rights they would have if legally adopted. Modern Status of Law as to Equitable Adoption or Adoption by Estoppel, 122 A.L.R. 5th 205 (2004).

Citing Thier, the DOR asserts that de facto adoption has never been recognized by a Washington appellate court. In re Marriage of Thier, 67 Wn. App. 940, 947 n.5, 841 P.2d 794 (1992) (noting no Washington case had recognized the doctrine). Stine is unable to cite any case where a Washington court has recognized the doctrine since Thier, but notes many foreign jurisdictions have as of 2004.

In Washington, adoptions are governed by statute, not common law. In re Estate of Renton, 10 Wash. 533, 542, 39 P. 145 (1895). In Renton, our Supreme Court held that stepchildren were prohibited from inheriting from their intestate stepfather as de facto adoptees because adoption in Washington is "purely statutory." Id.

Stine asserts that Renton is no longer controlling because it "would have been decided differently" today rendering it "simply not applicable and controlling." Stine's argument that Renton is no longer binding precedent is unsupported by caselaw. Therefore, we decline to recognize the common law doctrine of de facto adoption.

Stine is not eligible to inherit intestate under RCW 11.04.095. His other arguments lack merit. The trial court did not err in granting the State's motion for summary judgment and dismissing the action.

We affirm.

Appelwick, J.

WE CONCUR:

Bowman, J.  Verellen, J.

# APPENDIX B

## RCW 11.04.095

## Inheritance from stepparent avoids escheat.

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.

[ **2008 c 6 § 905**; **1965 c 145 § 11.04.095**. Prior: **1919 c 197 § 1**; RCW **11.08.010**; RRS § 1356-1.]

## NOTES:

**Part headings not law—Severability—2008 c 6:** See RCW **26.60.900** and **26.60.901**.

## ATTORNEY GENERAL'S OFFICE - REVENUE & FINANCE DIVISION

## February 17, 2021 - 8:45 AM

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