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IN THE SUPREME COURT OF THE STATE OF
WASHINGTON
No. 85944-2

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(Court of Appeals, No. 29153-7-III)

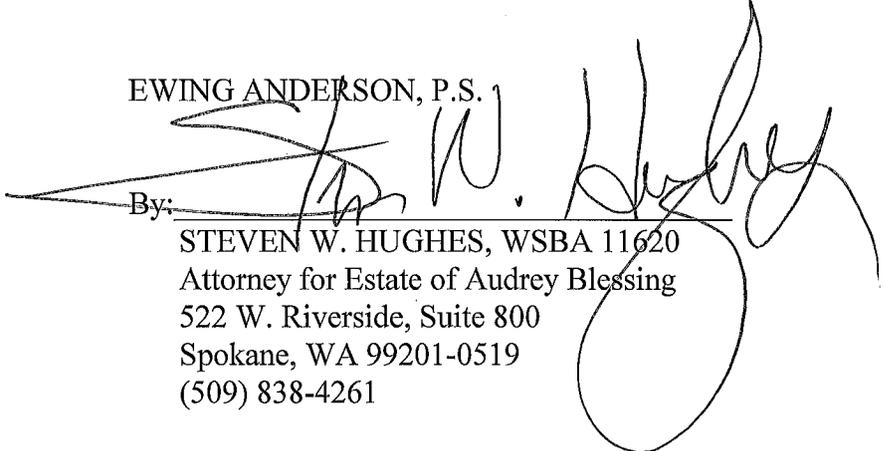
In re the Matter of the Estate of:

AUDREY P. BLESSING,

Deceased

ANSWER OF ESTATE OF AUDREY P. BLESSING TO
PETITION FOR DISCRETIONARY REVIEW

EWING ANDERSON, P.S.

By: 

STEVEN W. HUGHES, WSBA 11620
Attorney for Estate of Audrey Blessing
522 W. Riverside, Suite 800
Spokane, WA 99201-0519
(509) 838-4261

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I. INTRODUCTION

Washington's wrongful death statute creates a right of action for the benefit of the wife, husband, child or children, including "stepchildren," of the person whose death was wrongfully caused. The present Petition for Discretionary Review is filed by former stepchildren of the decedent, Audrey P. Blessing. These petitioners ask this Court to declare that former stepchildren are stepchildren forever and, therefore, forever statutory beneficiaries under the wrongful death statute. The petitioners herein ask this Court to disregard the requirement of a valid, current marriage between the parent and a non-parent for there to be a stepparent/stepchild relationship.

II. STATEMENT OF THE CASE

A. Facts

The Decedent, Audrey P. Blessing, was born on October 14, 1930, in Issaquah, Washington. (CP 134) Ms. Blessing was married to Alvin C. Hendricks from 1949 until they were divorced in 1964. (CP 134) Ms. Blessing and her husband, Alvin Hendricks, had three children, namely, Cynthia L. Hagensen, the Personal Representative in this action; Tamie L.

Tate; and a third daughter, who is deceased. (CP 25; 134) Alvin Hendricks is still alive.

On or about December 24, 1964, the Decedent, Audrey P. (Blessing) was married to Carl Leo Blaschka. (CP 11; 25; 134) Mr. Blaschka and his previous wife, Marion, had one child together, and Mr. Blaschka adopted three of Marion's children. (CP 11; 26; 134) The children of Mr. Blaschka and his previous wife Marion are the petitioners for discretionary review in this present action. (CP 25) Their names are John Blaschka, Julie Ann Frank, Diana Estep, and Carla Blaschka. (CP 11; 25) The Decedent, Audrey P. (Blessing) never adopted any of the petitioners herein. (CP 25; 134) Carl Blaschka, the petitioners' father, died in approximately 1994. (CP 11; 25; 134) No children were born as issue of the marriage of Audrey P. (Blessing) and Carl L. Blaschka. (CP 25; 134)

In 2002, Audrey P. (Blessing) married Robert Blessing. (CP 25; 134) Robert Blessing had one adult child by a prior marriage. (CP 134) No children were born to Robert Blessing or the decedent, Audrey P. (Blessing), and Ms. Blessing never adopted Robert's adult daughter from his prior marriage. (CP 134) Robert Blessing died in 2005. (CP 134)

On September 27, 2007, Audrey P. Blessing died, allegedly as the result of an automobile collision occurring on or about June 22, 2007. (CP 5; 25) Audrey P. Blessing was unmarried at the time of her death. (CP 24; 26)

B. Procedure

On October 23, 2007, an Order of the Spokane County Superior Court was entered admitting the Last Will and Testament of Audrey P. Blessing to probate, authorizing issuance of Letters Testamentary to her natural daughter, Cynthia L. Hagensen, and entering an Order of Solvency. Ms. Blessing's Will named the petitioners as residuary beneficiaries of a portion of her estate. (CP 1-4; 5-6; 7)

Cynthia L. Hagensen, as the Personal Representative of the Estate of her late mother, Audrey P. Blessing, made claim for the wrongful death of her late mother against the "at fault" party who was driving the truck which rear-ended Audrey P. Blessing's vehicle, ultimately resulting in her death. (CP 12; 25) The wrongful death claim for Ms. Blessing now consists of an underinsured motorist claim against Ms. Blessing's own insurance carrier.

On or about November 5, 2009, a Petition was filed in the Spokane County Superior Court requesting judicial determination that the petitioners, who are the adult children of Carl L. Blaschka, are beneficiaries in the Estate's wrongful death claim. The Estate denied the allegations contained in the Petition by virtue of its response filed January 7, 2010. (CP 11-13)

On April 13, 2010, Cynthia Hagensen, as the Personal Representative of the Estate of her late mother, Audrey P. Blessing, deceased, filed a Motion for Judgment (1) Declaring that the petitioners are not "stepchildren" for the purposes of the wrongful death statute; (2) dismissing the petitioners' TEDRA Petition; and (3) awarding the Estate its reasonable attorney fees and costs under RCW 11.96A.150. (CP 14-15; 16-23)

The cross-motions were heard by the Honorable Michael P. Price, Spokane County Superior Court Judge. Judge Price, in his Order filed June 3, 2010, declared that the petitioners were "stepchildren" of Audrey P. Blessing and beneficiaries in any wrongful death claim brought by the Estate of Audrey P. Blessing, deceased.

On June 1, 2010, the Estate filed a motion for reconsideration of its decision declaring that the petitioners are “stepchildren” for the purposes of the wrongful death statute. (CP 133-140) On June 4, 2010, the Honorable Michael P. Price, Superior Court Judge, entered an Order denying the Estate’s motion for reconsideration. (CP 156)

On June 18, 2010, the Estate filed its Notice of Appeal to the Court of Appeals, Division III.

In its published opinion filed on March 24, 2011, Division III of the Washington State Court of Appeals reversed the trial court’s ruling that the adult children of Audrey Blessing’s deceased second husband remained her “stepchildren” within the meaning of the Washington wrongful death statute (RCW 4.20.020). The appeals court ruled that since Audrey Blessing had survived her third husband and was unmarried at the time of her allegedly wrongful death, the “stepparent/stepchild” relationship with the petitioners had legally ended before Ms. Blessing’s death. The Court of Appeals ruled that the petitioners were at best “former stepchildren,” not “stepchildren,” and, thus, not statutory beneficiaries of any wrongful death claim of Audrey Blessing. The Court of Appeals

reversed the trial court's decision and awarded the Estate its reasonable attorney fees and costs under RCW 11.96A.150 and RAP 18.1.

III. ARGUMENT

A. Petitioners Have Failed to Meet the Requirements of Rules of Appellate Procedure 13.4, and Thus Their Petition for Review Should be Denied.

RAP 13.4 dictates that when petitioning for discretionary review by the Supreme Court, the petition for review will be accepted by the Supreme Court only if: (1) the decision is in conflict with a decision of the Supreme Court; or (2) the decision is in conflict with another decision of the Court of Appeals; or (3) a significant question of constitutional law is involved; or (4) the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b). The petitioners herein allege, incorrectly, that No. 1 and No. 4 apply, and, thus, justify this Court in granting discretionary review.

1. The Petitioners Here Wrongly Contend That The Court Of Appeal's Decision In The Present Matter Is In Conflict With This Court's Decision In A Case Known As In Re Bordeaux's Estate, 37 Wn.2d 561, 225 P.2d 433 (1950).

The Petitioners have harvested quotes from the case of In re Bordeaux's Estate, 37 Wn.2d 561, 225 P.2d 433 (1950), to support their argument that they are still stepchildren of Audrey Blessing. The Bordeaux

case has nothing in common with the situation now before the Court, and the Bordeaux facts are clearly distinguishable. Subsequent Washington Supreme Court cases have refused to apply that law. See, In re Smiths Estate, 49 Wn.2d 229, 299 P.2d 550 (1956) at 234.

The Bordeaux case cited above involved the marriage of Thomas Bordeaux and Sara Bordeaux in 1900. At the time of the marriage, Thomas Bordeaux had two minor children, Chester and Russell, ages 10 and 5 years, respectively. They were brought up in the home of their stepmother entirely, and testified that ‘to all intents and purposes, she was our mother and we refer to her as such.’ Id. at 561. Thomas Bordeaux, Chester and Russell’s father, died in 1934. Sara, his surviving spouse, inherited the community property accumulated during the marriage. Sara herself died in 1949. The bulk of her estate passed by virtue of her Will to Chester and Russell.

The issue for the court in Bordeaux was “into what class of beneficiaries Chester Bordeaux and Russell Bordeaux fall.” Id. at 561. The answer to the question would determine the amount of inheritance tax which would be assessed against the property which Chester and Russell inherited by Will.

The Bordeaux court discussed the distinctions between actual children and “stepchildren” for the purposes of their classification under the inheritance tax statute. The Bordeaux court concluded that Chester and Russell should be taxed at the same rate, as they admittedly would have been taxed had their father or their half-brother survived their stepmother. This decision was based solely on the court’s reading of the inheritance tax statute.

The biological parent of the adult petitioners in the present case not only died 16 years before Audrey’s own death, but Audrey Blessing subsequently remarried. In the case at hand, the wrongful death statute, and not one’s Will, determines exactly who are the statutory beneficiaries of a wrongful death claim. See, Wood v. Dunlap, 83 Wn.2d 719, 521 P.2d 1177 (1974) and RCW 4.20.020. The Bordeaux case is inapposite.

This court in In re Smith’s Estate, 49 Wn.2d 229, 234, 299 P.2d 550 (1956), held that Bordeaux was inapplicable because its classification for inheritance tax purposes had no bearing on whether a stepchild may inherit from his stepparent as an heir-at-law. Bordeaux is distinguishable factually, and is simply not applicable here. There is no conflict between

the Bordeaux decision of the Supreme Court and the Court of Appeal's decision in the present case.

2. **The Petitioners Incorrectly Argue That Their Petition Involves An "Issue Of Substantial Public Interest That Should Be Determined By The Supreme Court."**

The petitioners argue that the statutory rights of "stepchildren" should be determined by this Court. The petitioners further argue that the rights of "stepchildren" have been, are, and should continue to be enhanced by the law, and their stated reason for that policy is "that there are millions of us around." (Petition for Discretionary Review, p. 18) The fatal flaw in the petitioners' argument is that it is based on a false premise. The petitioners are not "stepchildren" of Audrey Blessing. The petitioners are at best "former stepchildren." The wrongful death statute names "stepchildren" as beneficiaries, not "former stepchildren." The petitioners are in fact asking this Court to declare as law that "once a stepchild, always a stepchild," but provide no rational argument to support that position.

a. **Wrongful Death – Statutory Heirs.**

RCW 4.20.010 entitled WRONGFUL DEATH - RIGHT OF ACTION, reads in pertinent part as follows:

When the death of a person is caused by the wrongful act, neglect or default of another, his personal representative may maintain an action for damages against the person causing the death;...”

The recovery for wrongful death, however, does not become an asset of the decedent’s estate. Under RCW 4.20.020 the action for wrongful death is “for the benefit of the wife, husband, child or children, including stepchildren, of the person whose death shall have been so caused.”

The words “including stepchildren” were inserted by the legislature in 1985. The statute’s language and legislative history are silent as to the definition of “stepchildren.”

b. Stepchildren.

Black’s Law Dictionary defines “stepchild” as: “The child of one of the spouses by a former marriage.”

Thus, a “stepchild” must be the natural (or legally adopted) child of one of the spouses. This definition does not say “ex-spouses” or “former spouses” but, rather, simply “spouses.” Therefore, by the plain language of this definition, once the marriage has ended, the “step” relationship also ends.

The Washington legislature has established this same definitional limitation in other areas of the law. According to the support of dependent children statute found at RCW 74.20A.020(8):

Step-parent means, the present spouse of the person who is either the mother, father, or adopted parent of a dependent child, and such status shall exist until terminated as provided for in RCW 26.16.205. [Emphasis added.]

A stepparent is the present spouse, not an ex-spouse or a former spouse. This statute states that the stepparent relationship terminates “upon the entry of a Decree of Dissolution, Decree of Legal Separation, or death.” RCW 26.16.205.

The case of Strickland v. Deaconess Hospital, 47 Wn.App. 262, 735 P.2d 74 (1987), dealt with facts which are pertinent here. In 1982, Gilbert Strickland suffered cardiopulmonary failure and was admitted to Deaconess Hospital where he was placed on a respirator. Mr. Strickland’s physician entered a “No Code” order in Mr. Strickland’s medical chart, claiming he had permission, which was later disputed. Thereafter, James and Robert Weaver came to visit Mr. Strickland in the hospital. James and Robert were the sons of Joan Weaver, whose marriage to Mr. Strickland had previously been invalidated upon the discovery that she was still bound by a previous marriage. Neither James nor Robert Weaver were

adopted by Mr. Strickland, and it had been many years since they had been members of the Strickland household.

Mr. Strickland ultimately recovered, and thereafter he, as well as James and Robert Weaver, brought an action against the hospital based on theories of negligence, lack of informed consent, and outrage. Later that year, Mr. Strickland and Robert Weaver died. The hospital and the doctors involved moved for summary judgment of dismissal on the grounds that neither Mr. Strickland nor Robert Weaver's causes of action survived their deaths, and the remaining Weavers lacked standing as relatives to assert claims of emotional distress/outrage.

The Weavers contended that the closeness of the relationship, which developed during the years they were raised in Mr. Strickland's household, brought them within the class of "immediate family" entitled to sue for outrage. The Strickland court declared that "immediate family members" entitled to recover under a theory of outrage consists of those who are also permitted to bring wrongful death actions.

The Strickland court declared on page 269, in pertinent part, the following:

Under that statute (the wrongful death statute) the legislature has expressed the policy that recovery is available to spouses, children, step-children, parents and

siblings. RCW 4.20.020. We conclude its limitation is reasonable and comports with Grimsby's reference to "immediate family"; and hold its rationale applies in an action for outrage.

The court went on to declare:

Here, the Weavers are not included within the class of people categorized as immediate family members and therefore do not fall within the class of people entitled to bring this action. The Weavers were neither adopted, nor actual step-children of Mr. Strickland....

Here, the Weavers claim no blood relationship, either legitimate or illegitimate, nor do they come within the legally recognizable definition of step-child, which is "a child of one's wife or husband by a former marriage." [Emphasis added]

The Strickland court dismissed the claims of the Weavers, finding that they were not stepchildren, since Mr. Strickland's marriage to their mother, Joan Weaver, was invalidated.

In the present matter, the petitioners are not "stepchildren" of Audrey Blessing, since Audrey Blessing's marriage to the petitioners' father, Carl L. Blaschka, terminated in 1994 upon the death of Mr. Blaschka. The "step-relationship" between stepparent and stepchild requires a valid marriage to currently exist, and simply ends upon the termination of the marriage between the former stepparent and the child's actual biological

parent. Accordingly, petitioners are not beneficiaries under the wrongful death statute.

A case from Michigan is in accord. In In re Combs, the deceased's former stepchildren argued that they were beneficiaries under Michigan's wrongful death statute. 257 Mich.App. 622, 623, 669 N.W.2d 313, 314 (2003). Michigan's wrongful death statute included as beneficiaries "children of the deceased spouse," i.e., stepchildren. See, Id. at 624. However, the Combs court explicitly noted that the deceased in that case had been a widow for several years before death, as the stepchildren's father and former spouse to the deceased passed away several years earlier. The Combs court ruled, at page 625, the following:

Applying the plain meaning of this provision to the facts of this case, we conclude that the appellants are not the "children of the deceased's spouse" because the deceased, Ellen Combs, had no spouse at the time of her death. A "spouse" is a married person. In this case, Arlie Combs, Ellen Combs' husband, had passed away several years earlier, and his death ended their marriage. For this reason, we conclude that the appellants are not entitled to a portion of the proceeds of the wrongful death action. [Emphasis added]

The Combs court explicitly stated that a spouse's death legally ends a marriage. Id. at 625. In the present case, Audrey Blessing had no spouse at the time of her death in 2007. She therefore had no stepchildren.

Washington courts have long adhered to well established rules of statutory construction. The rules that are pertinent to this case are as follows:

1. When called on to interpret a statute, the courts give effect to the legislative intent. *State v. Hammock*, 154 Wn.App. 630, 635, 226 P.3d 154 (2010).
2. When interpreting a statute, the court first looks to its plain language. *Id.*
3. If the plain language is subject to only one interpretation, the court's inquiry ends. *Id.*
4. When a statutory term is undefined, the words of a statute are given their ordinary meaning, and the court may look to a dictionary for such meaning. *State v. Gonzalez*, 168 Wn.2d 256, 263, 226 P.3d 131 (2010).
5. When the words in a statute are clear and unequivocal, the court is required to assume the legislature meant exactly what it said and apply the statute as written. *Ralphs Concrete v. Concord Concrete*, 154 Wn.App. 581, 591, 225 P.3d 1035 (2010).
6. The courts may not add words where the legislature has chosen to exclude them. *State v. Delgado*, 148 Wn.2d 723, 63 P.3d 792 (2003).
7. The court avoids reading the statute in ways that will lead to absurd or strange results. *Lane v. Harborview Medical Center*, 154 Wn.App. 279, 289, 227 P.3d 297 (2010).

In the present case, the rules of statutory construction do not support the petitioners' position. The petitioners have provided no evidence that the legislature intended to decree that once an individual is a stepchild, that individual is forever a stepchild for the purpose of the wrongful death statute. The wrongful death statute says "stepchildren," and does not say "former stepchildren." The statutory term "stepchildren" is undefined in the statute, however, *Black's Law Dictionary* defines a stepchild as "the child of one of the spouses by a former marriage." The trial courts may not add words where the legislature has chosen to exclude them. The court in Strickland, cited above, stated that there must be a valid marriage for there to be a stepchild.

In the present case, Audrey Blessing's first husband is still alive and, therefore, if the word "former" should be added to all the statutory categories of beneficiaries under the wrongful death statute, he would still be a beneficiary as a "former spouse." This, despite the fact that Audrey was married twice after she divorced him.

Audrey Blessing's last husband, who died during their marriage, had an adult child from a previous marriage. Under the petitioners' rationale, that adult child would also be a statutory beneficiary if "former

stepchildren” are included. Moreover, if any of Audrey Blessing’s three husbands had children from prior relationships, known or unknown, they too would be statutory beneficiaries as “former stepchildren.” If the well known and often married actor Mickey Rooney were to be wrongfully killed and the term “former” was added to the wrongful death beneficiary list, the problem with the petitioners’ argument becomes clear. It would be absurd for the personal representative of Audrey Blessing to be required to search to determine if there were any other “former” members of the list of statutory beneficiaries before proceeding to prosecute the wrongful death claim.

B. The Estate Of Audrey Blessing Is Entitled To Its Reasonable Attorney Fees And Costs.

RCW 11.96A.150, entitled **Costs—Attorney’s Fees**, reads, in pertinent part, as follows:

- (1) Either the Superior Court or the Court of Appeals may, in its discretion, order costs, including reasonable attorney fees, to be awarded to any party:
 - (a) from any party to the proceedings....The court may order the costs to be paid in such amount and in such manner as the court determines to be equitable.

In the present case, the petitioners have continued to assert their claim that they remain the “stepchildren” of Audrey P. Blessing, despite the controlling authority which holds otherwise. The principal determining factor for an award of fees to the Estate is “whether the litigation benefits the estate or trust involved.” See generally, In re Estate of Kerr, 134 Wn.2d 328, 949 P.2d 810 (1998). The Kerr case involved a dispute between two beneficiaries and an unsuccessful attempt to remove the personal representative. The Kerr court found there was no substantial benefit to the estate or to its other beneficiaries, who indirectly bore the costs of litigation. Id. at 344. Therefore, the Kerr court awarded attorney fees to the estate.

In the present case, the petitioners continue to argue the same matters over and over again, and base their arguments on cases which are inapplicable, and ignore the simple fact that “former stepchildren” or not “stepchildren” for the purposes of the wrongful death statute. The Court of Appeals awarded reasonable attorney fees to the Estate from the petitioners, since it was forced to defend without corresponding benefit to the Estate. This Court is respectfully requested to award the Estate of Audrey Blessing its reasonable attorney fees and costs in responding to

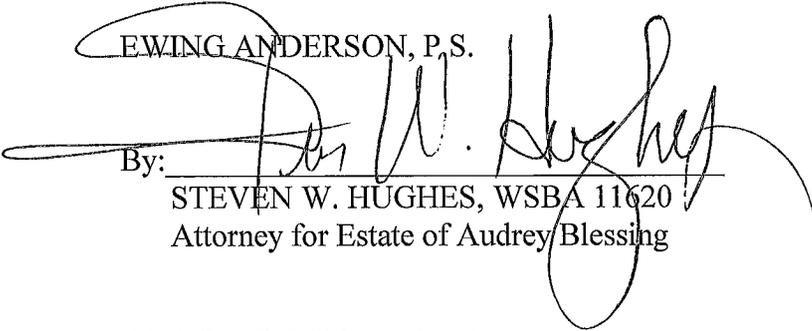
this Petition for Discretionary Review, which is not well grounded in law or fact. RAP 18.1(j).

IV. CONCLUSION

The Court of Appeals properly declared that the petitioners are not “stepchildren” of Audrey Blessing, deceased, for the purposes of the wrongful death statute, and awarded the Estate its reasonable attorney fees and costs. This Court is respectfully requested to deny, in total, the Petition for Discretionary Review herein, and to award the Estate its further reasonable attorney fees and costs in responding to this Petition for Review.

DATED this 24TH day of MAY, 2011.

EWING ANDERSON, P.S.

By: 

STEVEN W. HUGHES, WSBA 11620
Attorney for Estate of Audrey Blessing

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