

1951

In the Matter of the Estate of Mignon Denhalter Lewis : Appellants' Reply Brief

Utah Supreme Court

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Case No. 7724

IN THE SUPREME COURT

of the

STATE OF UTAH

FILED

NOV 1 1951

Clerk, Supreme Court, Utah

IN THE MATTER OF THE ESTATE
OF MIGNON DENHALTER LEWIS,
DECEASED,

Appealed from Third District Court,
Hon. Martin M. Larsen, Judge

APPELLANTS' REPLY BRIEF

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I N D E X

	PAGE
CASES CITED	
Bohwer v. District Court, 41 Ut. 279; 125 Pac. 671.....	4
Chapman v. Handley, 7 Ut. 49.....	2
Cope v. Cope, 137 U.S. 682.....	2
Farrell v. Pingree, 5 Ut. 443; 16 Pac. 843.....	3
In re Garr's Estate, 31 Ut. 57; 86 Pac. 757.....	2
In re Estate of Thomas Cope, 7 Ut. 63; 24 Pac. 567.....	2
Mercur Gold Mining & Milling Co. v. Spry, 16 Ut. 222, 229; 52 Pac. 382	3
Pfeifer v. Wright, 41 F (2d) 464.....	7
Smith v. Smith, 105 Kan. 294; 182 Pac. 538.....	6
Wolf v. Gull, 32 Cal. App. 286; 163 Pac. 350.....	5

OTHER AUTHORITIES

59 C.J.S. 1157	3
Crawford's Statutory Construction, page 562, Sec. 277.....	3
Lewis' Sutherland Statutory Construction, Vol. 2, page 1157, Sec. 641.....	3

STATUTES CITED

U.C.A. 1943, 14-2-14.....	1, 2, 5, 6
U.C.A. 1943, 14-4-12.....	1, 2, 5, 6
U.C.A. 1943, 101-4-10.....	1, 2, 4, 7
Laws of Utah 1911, Chapter 62.....	3

IN THE SUPREME COURT
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STATE OF UTAH

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APPELLANTS' REPLY BRIEF

We have considerable difficulty in ascertaining the particular provisions of our law that is relied upon by the respondent as the basis of his claim that he is entitled to participate in the distribution of the estate of Mignon Lewis Deceased, even if it be assumed that he is the natural grandchild of Henry Charles Denhalter.

On page 13 of respondent's brief there is cited the provision of Sections 14-2-14 and 14-4-12 of the Utah Code Annotated, 1943 and on page 14 of such brief is cited U.C.A., 1943, 101-4-10. Apparently respondent claims that the intention of the Legislature is to be gleaned from all of such provisions. Obviously the intentions of the Legislature in the enactment of U.C.A.,

1943, 14-4-12 and U.C.A., 1943, 101-4-10 could not have been influenced by the passage of U.C.A., 1943, 14-2-14 because the latter act was not passed until 1911, while the former acts were passed many years before. A history of an act which is substantially the same as U.C.A., 1943, 14-4-12 will be found in the case of *Chapman v. Handley*, 7 Ut. 49 and the companion case of *In re Estate of Thomas Cope*, 7 Ut. 63, 24 Pac. 567, which latter case was reversed in the case of *Cope v. Cope*, 137 U.S. 682.

In the case of *In re Garr's Estate*, 31 Ut. 57, 86 Pac. 757 it will be noted that Sections 10 and 2833 Revised Statutes of Utah 1898 are the same as U.C.A., 1943, 14-4-12 and U.C.A., 1943, 101-4-10 respectively.

Before the respondent can recover he must bring himself within one of the provisions of the law relating to the right of illegitimate children to inherit property. An illegitimate child cannot derive a part of such right from one of such provisions and the remainder from some other provision of our statute.

In our original brief, we have pointed out that the language of our statute on bastardy is not susceptible of a construction that the marriage of the parents of an illegitimate child without more will render such child legitimate. We shall not repeat what is there said.

There is however another reason which we neglected to discuss in our original brief why the provisions of our so-called bastardy law (U.C.A. 1943, 14-2-14) does not aid the respondent in sustaining his claim to a part of the estate of Mrs. Lewis. As stated in our original

brief, the original bastardy law was enacted in 1911, Laws of Utah, 1911, Chapter 62. At the time of the enactment of that law, the father of the respondent had been born. Trs. 43-46. He had been adopted by the Johnstons. Tr. 61. His mother and Henry Charles Denhalter had been divorced. The divorce was granted on July 29, 1910. Tr. 65-67.

Utah now has and at all times involved in this proceeding has had a law which provides that "No part of these revised statutes is retroactive unless expressly so provided." U.C.A., 1943, 88-2-3. Such was also the provisions of Compiled Laws of Utah, 1907, Sec. 2490. Independent of statute such is the law generally as is held by this and the courts generally. *Farrel v. Pingree*, 5 Ut. 443, 16 Pac. 843; *Mercur Gold Mining & Milling Co. v. Spry*, 16 Ut. 222, 229; 52 Pac. 382. See also 59 C.J.S. 1157 et seq.; *Crawfords' Statutory Construction*, page 562, Sec. 277 et seq; *Lewis' Sutherland Statutory Construction*, Vol 2, page 1157, Sec. 641 et seq. If the court wishes to pursue the inquiry further, numerous cases will be found collected in foot notes to the text above mentioned.

The authorities teach that a retroactive law is a law that looks backward or to things that are past. It grants a right where none before existed or attempts to deprive one of a right which formerly existed. The law making power is prohibited from enacting some retroactive laws such as ex part facto and laws impairing the obligations of contracts by constitutional provisions. We do not contend that there is any constitutional inhibition pre-

venting the Legislature from rendering children legitimate that were illegitimate before such law was enacted, but we do contend that there is no language in the bastardy law of 1911 or the amendments thereto which shows or tends to show a legislative intention to give such law a retroactive effect so as to confer a right of inheritance upon the respondent's father or upon him.

On pages 14 and 16 of respondent's brief, the case of *Bohwer v. District Court of First Judicial District*, 41 Ut. 279; 125 Pac. 671 is discussed at some length and a substantial part thereof is quoted. As we read that case it makes against the claim of respondent. We have discussed that case on pages 42 and 43 of our original brief and no useful purpose will be served by repeating what is there said.

Suffice it to again note that notwithstanding the provisions of U.C.A., 101-4-10 was at the time involved in the case of *Bohwer v. District Court* supra, a part of the law of this state this court expressly held that a child meeting the requirements of that section is not thereby rendered legitimate. Indeed the very language of U.C.A., 1943, 101-4-10 refers to a child that is by such section made an heir of the person who acknowledges himself to be the father, as an illegitimate child. So also as pointed out in our original brief that the only right conferred upon an illegitimate child by that section is the right to *inherit the estate of his parents*. As the authorities teach, that section is one of succession, not of legitimation. It is found in our law of succession. If the Legislature had intended by that section to render an illegiti-

mate child legitimate, it would have so provided as it did in Sections U.C.A., 1943 14-4-12 and 14-2-14.

On page 18 of respondent's brief, there is cited the case of *Wolf v. Gull*, where it is held that legitimate children can inherit from their grandmother by right of representation. We have no quarrel with the law there announced. Indeed we cannot well see how the law could be otherwise. If a child is rendered legitimate for all purposes, such a status would doubtless include the right of inheritance the same as in the case of a legitimate child. If the respondent fell within the provisions of either U.C.A., 1943 14-2-14 or U.C.A. 1943, 14-4-12, we would not be here contending that he could not participate in the estate of Mrs. Lewis if in fact he is the grandchild of her brother.

In both our original and in this brief, we have pointed out why the respondent may not successfully establish a right by reason of U.C.A., 1943, 14-2-14, the so-called bastardy law.

On pages 31 and 32 of our original brief, we have enumerated the requirements necessary to render an illegitimate child legitimate under the provisions of U.C.A., 1943, 14-4-12. We are not entirely clear whether the respondent claims that his father was rendered legitimate by having complied with that statute. On page 27 of respondent's brief, it is said that "the language of 14-4-12, which states that the child made legitimate by the father's acknowledgement is thereupon deemed for all purposes legitimate from the time of its birth." Neither

that or any other statute of Utah makes a child legitimate merely by acknowledgement.

If any lingering hope is entertained by respondent that his father was rendered legitimate by U.C.A., 1943, 14-4-12, we direct the attention of the court to the facts that all of the provisions of that section must be met to render a child legitimate. If the court desires additional authorities in support of the view that the evidence does not bring the respondent's father within that provision of our statute, we direct the attention of the Court to the following additional authorities: 7 *C.J.S.*, page 948, Sec. 20 and 10 *C.J.S.* p. 55 to 59 and cases cited in foot notes to the text.

On page 21 of respondent's brief there is cited the case of *Smith v. Smith*, 105 Kan. 294; 182 Pac. 538, 540, and as we understand respondent's contention, the provisions of the laws of Kansas cited in the opinion are so near like the provisions of our U.C.A., 1943, 101-4-10 that the construction placed by the Kansas court on its statutes mentioned in that opinion should be placed upon our Section 101-4-10.

There are a number of reasons why the decisions of the Courts of Kansas are not applicable to our statutory law. Kansas apparently has no such provisions as our section 14-2-14 and 14-4-12 whereby an illegitimate child may become legitimate. It will be seen from the opinion in the *Smith* case that there were a number of other statutes in Kansas that the Court apparently held gave support to the result reached in that case. Moreover, in examining the *Smith* case and other Kansas cases from

that state relating to illegitimate children, it is enlightening to read the case of *Pfeifer v. Wright*, 41 F (2d) 464 cited on page 24 of respondent's brief.

A reading of the case of *Pfeifer v. Wright* shows that the judges of the Federal Circuit of Appeals had a struggle to ascertain just what the law touching illegitimate children was in the State of Kansas. All of the judges were apparently agreed that language such as that contained in the Kansas law does not render an illegitimate child legitimate at common law so as to entitle such child to inherit from persons other than those specifically provided for in the law. One of the judges took the view that Kansas had apparently adopted the civil law and therefore an illegitimate child could inherit the same as if legitimate.

When the court reads the *Pfeifer v. Wright* case it will, we believe, find that the law there announced is in accord with the position of appellants, namely, that statutes such as our U.C.A., 1943, 101-4-10 is a statute of succession and as such an illegitimate child is limited to inherit in the estate of his father and is wholly without right in the estate of collateral relatives of his father.

Respectfully submitted,

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