

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

In re the ESTATE OF Richard ROBERTSON, Deceased

In re Estate of Robertson, 520 So. 2d 99 (Fla. 4th DCA 1988) · No. No. 87-2259

SUMMARY

The Florida District Court of Appeal held that a child born during her mother’s marriage to another man could establish paternity and inherit from her biological father under Florida’s intestacy statute, § 732.108(2)(b), because the phrase “born out of wedlock” is synonymous with “illegitimate” and the statute must be liberally construed to allow children to inherit from natural fathers. The court further ruled that a prior dissolution judgment declaring the child a product of the marriage did not bar the child’s paternity claim under res judicata or collateral estoppel, as the child was not a party to that proceeding. The child’s claim was also not time-barred because the appellant’s false representations caused the delay, and an heirship claim is not a “claim” subject to the three-year presentation requirement of § 733.702(1)(b).

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	HERSEY; LETTS; GLICKSTEIN
JURISDICTION	Florida
DOCKET	No. 87-2259
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order vacating an earlier order of family administration which had designated Helen Robertson as sole heir of the decedent's estate.
STANDARD OF REVIEW	Not explicitly stated; the court reviews the trial court's findings for sufficient evidence and reviews statutory interpretation de novo.
PRECEDENTIAL VALUE	binding
PARTIES	Helen Robertson v. Linda Hill Allard, as guardian of Nicole Allard

TOPICS

- probate
- family law
- civil procedure
- res judicata
- statute of limitations

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a child born during her mother's marriage to another man can inherit from her biological father under § 732.108(2)(b), Florida Statutes, which allows inheritance by a 'person born out of wedlock' if paternity is established.
2. Whether Nicole's claim of paternity and heirship is barred by the prior dissolution judgment between her mother and David Allard which referred to Nicole as a child of the marriage.
3. Whether Nicole's claim is barred by the statute of limitations or by § 733.702(1)(b), Florida Statutes (1985).

HOLDINGS

1. A child born during her mother's marriage to another man may establish paternity for heirship purposes and inherit from her biological father under § 732.108(2)(b), Florida Statutes, even though she is not technically born 'out of wedlock,' because the statute is to be liberally construed to effectuate its underlying purpose of permitting children to inherit from their natural fathers.
2. A prior dissolution judgment that adjudicates a child as born of the marriage does not bar the child's separate action to establish paternity of her biological father, because the child was not a party to that prior litigation and thus neither res judicata, collateral estoppel, nor estoppel by judgment applies.
3. Nicole's claim is not barred by the statute of limitations because the delay in filing was caused by false representations made by appellant Helen Robertson. Additionally, Nicole's claim of heirship is not a 'claim' within the meaning of § 733.702(1)(b), and the argument under § 733.702 was not preserved for appeal.

KEY QUOTATIONS

“For the purpose of intestate succession ... a person born out of wedlock is ... a lineal descendant of his father and is one of the natural kindred of all members of the father's family, if: (b) The paternity of the father is established by an adjudication before or after the death of the father.” (at 101)

“There is a strong presumption that a child born 'in wedlock' is legitimate. To overcome that presumption the evidence must be clear and satisfactory and, in order to establish paternity after the death of the putative father, the evidence must be 'clear, strong and unequivocal.' In re Estate of Broxton, 425 So.2d 23 (Fla. 4th DCA 1982).” (at 101)

“As stated by this court in Jerrido, a statute legitimating children for inheritance purposes is to be liberally construed to effectuate its purpose. 339 So.2d at 239.” (at 102)

“The feature which prevents the cases so holding from being, by analogy, determinative of the claim of Nicole is the fact that Nicole was not a party to the litigation in which the issue was determined. Therefore she is not precluded by res judicata, collateral estoppel or estoppel by judgment from seeking an adjudication of the issue of paternity in the present case.” (at 102)

“The purposes of the statutes of limitations are to protect defendants against unusually long delays in filing of lawsuits and to prevent unexpected enforcement of stale claims concerning which interested persons have been thrown off guard for want of reasonable prosecution.” (at 102)

FACTUAL BACKGROUND

Decedent Richard Robertson had a relationship with Linda Hill in 1976, resulting in pregnancy. Linda married David Allard in September 1976, and gave birth to Nicole in March 1977. Richard Robertson died intestate in April 1983. His mother, Helen Robertson, obtained an order of family administration designating herself as sole heir, intentionally failing to disclose Nicole's existence. Evidence showed that the decedent acknowledged paternity of Nicole, lived with Nicole and her mother for approximately five years before his death, contributed to their support, and expressed his wish that Nicole inherit from him. Helen Robertson and other family members had also accepted Nicole as Richard's child.

PROCEDURAL HISTORY

Richard Robertson died intestate in 1983. His mother, Helen Robertson, obtained an order of family administration designating her as sole heir. Linda Hill Allard, as guardian of the decedent's minor daughter Nicole, petitioned to set aside that order. The trial court found that Nicole was the decedent's natural daughter, that Helen Robertson had committed fraud on the court by failing to disclose Nicole's status, and vacated the order of family administration, making Nicole the sole heir. Helen Robertson appealed.

DISPOSITION

affirmed

CASES CITED

- In re Estate of Broxton, 425 So. 2d 23 (Fla. 4th DCA 1982)
- Williams v. Estate of Long, 338 So. 2d 563 (Fla. 1st DCA 1976)
- In re ESTATE of Parris JERRIDO, Deceased., In re Estate of Jerrido, 339 So. 2d 237 (Fla. 4th DCA 1976)
- Decker v. Hunter, 460 So. 2d 1014 (Fla. 3d DCA 1984)
- Herout v. Lawrence, 423 So. 2d 558 (Fla. 1st DCA 1982)
- Van Nostrand v. Olivieri, Nostrand v. Olivieri, 427 So. 2d 374 (Fla. 2d DCA 1983)
- Nardone v. Reynolds, 333 So. 2d 25 (Fla. 1976)
- In re ESTATE of Parris JERRIDO, Deceased., In re Estate of Jerrido, 339 So. 2d 237 (Fla. 4th DCA 1976), cert. denied, 346 So. 2d 1249 (Fla. 1977)