

SUPREME COURT OF NEW HAMPSHIRE

Eng Khabbaz ex rel. Eng v. Commissioner, Social Security
Administration, 155 N.H. 798

930 A.2d 1180 (2007) · No. No. 2006-751 · Decided August 9, 2007

SUMMARY

The Supreme Court of New Hampshire answered in the negative a certified question asking whether a child conceived through artificial insemination after her father's death could inherit from him as surviving issue under New Hampshire intestacy law. The court held that the plain meaning and statutory context of RSA 561:1 require an inheriting child to have been alive or in existence when the decedent died. It declined to extend inheritance rights through related statutes or public policy, leaving any change to the legislature.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Duggan, J.; Broderick, C.J.; Dalianis, J.; Galway, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	August 9, 2007
DOCKET	No. 2006-751
DISPOSITION	remanded
PROCEDURAL POSTURE	The United States District Court for the District of New Hampshire certified a question of unresolved New Hampshire intestacy law to the Supreme Court of New Hampshire under New Hampshire Supreme Court Rule 34.
STANDARD OF REVIEW	De novo statutory interpretation; the Supreme Court of New Hampshire is the final arbiter of legislative intent as expressed in the statutory text.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; binding New Hampshire authority on the interpretation of RSA 561:1.
PARTIES	Christine C. Eng Khabbaz, by and through her mother and next friend, Donna M. Eng v. Commissioner, Social Security Administration

TOPICS

intestacy

statutory interpretation

probate procedure

legislative intent

PRACTICE AREAS

probate

estate administration

administrative law

family law

QUESTIONS PRESENTED

1. Whether a child conceived after her father's death through artificial insemination is a surviving issue eligible to inherit from him under New Hampshire intestacy law.
2. Whether the statutory definition of issue in RSA 21:20, the inheritance provisions for children of unwed parents in RSA 561:4, the assisted-reproduction provisions in RSA chapter 168-B, or the Uniform Simultaneous Death Act altered the requirement that intestate heirs be surviving at the decedent's death.
3. Whether the court should adopt the Massachusetts Supreme Judicial Court's approach in *Woodward v. Commissioner of Social Security* and permit posthumously conceived children to inherit based on public policy.

HOLDINGS

1. A child conceived after the decedent's death is not a surviving issue within the plain meaning of RSA 561:1 and therefore cannot inherit from the decedent under New Hampshire intestacy law.
2. RSA 21:20 does not expand RSA 561:1, II(a) to include issue who were not alive or in existence at the decedent's death because applying that definition would be inconsistent with the manifest legislative intent and context of RSA 561:1.
3. RSA 561:4, RSA chapter 168-B, and the Uniform Simultaneous Death Act do not create an exception to RSA 561:1's surviving-issue requirement, and the court declined to adopt *Woodward* because doing so would require adding words to the statute.

KEY QUOTATIONS

"Is a child conceived after her father's death via artificial insemination eligible to inherit from her father as his surviving issue under New Hampshire intestacy law? We respond in the negative." (930 A.2d at 1182)

"It follows, therefore, that neither she nor any posthumously conceived child is a 'surviving issue' within the plain meaning of the statute." (930 A.2d at 1184)

"To reach the opposite result and adopt the reasoning of Woodward would require us to add words to a statute." (930 A.2d at 1186)

FACTUAL BACKGROUND

Rumzi Brian Khabbaz, who was married to Donna Eng, was diagnosed with a terminal illness and banked his sperm so that his wife could conceive through artificial insemination. He signed a consent stating that the sperm could be used to achieve a pregnancy and that he intended to be legally recognized as the child's father to the fullest extent allowed by law. He died on May 23, 1998; Christine C. Eng Khabbaz was conceived using his

banked sperm after his death and was born in 2000. She later sought Social Security survivor benefits, which depended on whether she could inherit from her father under New Hampshire intestacy law.

PROCEDURAL HISTORY

The Social Security Administration denied Christine Eng Khabbaz's application for survivor benefits. An administrative law judge upheld the denial, and the Appeals Council affirmed. On appeal, the federal district court certified to the New Hampshire Supreme Court the question whether a child conceived after her father's death through artificial insemination could inherit from him as surviving issue under New Hampshire intestacy law.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The certified question was answered in the negative, and the matter was remanded to the United States District Court for the District of New Hampshire.

CASES CITED

- Chase v. Ameritrust Mortgage Co., 155 N.H. 19, 22 (2007)
- Woodward v. Commissioner of Social Security, 435 Mass. 536, 760 N.E.2d 257 (2002)
- State v. Kidder, 150 N.H. 600, 604, 843 A.2d 312 (2004)
- In re Estate of Treloar, 151 N.H. 460, 462, 859 A.2d 1162 (2004)
- Eyre v. Storer, 37 N.H. 114, 122-23 (1858)
- In re Estate of Kirkpatrick, 77 P.3d 404, 412 (Wyo. 2003)
- In re Estate of Kolacy, 332 N.J. Super. 593, 753 A.2d 1257 (Ch. Div. 2000)