

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

Williams v. Estate of Long

338 So. 2d 563 (Fla. Dist. Ct. App. 1976) · No. No. AA-192 · Decided October 26, 1976

SUMMARY

The Florida First District Court of Appeal affirmed an order determining that three children were the illegitimate children of J.D. Long and were entitled to inherit from his estate. The court held that, under Gammon v. Cobb, the children's mother could testify regarding their illegitimacy despite having been married to another man when they were born. It also held that Long's written acknowledgment of paternity in an insurance application satisfied the requirements of section 731.29, Florida Statutes (1973), and that the presumption of legitimacy for children born in wedlock was rebuttable.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	McCord; Rawls, Acting C.J.; McCord, J.; Smith, J.
JURISDICTION	Florida
DECIDED	October 26, 1976
DOCKET	No. AA-192
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order determining the beneficiaries of the Estate of J.D. Long.
STANDARD OF REVIEW	Appellate review of an order determining estate beneficiaries for legal error; the trial court's factual findings were upheld where supported by the evidence.
PRECEDENTIAL VALUE	Published appellate opinion; precedential under Florida law unless subsequently limited or overruled.
PARTIES	Shadrock Williams, Children of J.D. Long and Refair Long, Administrator of the Estate of J.D. Long v. Estate of J.D. Long, Deceased, Children of Velma Brunson (Long)

TOPICS

- probate procedure
- estate administration
- evidence
- statutory interpretation
- appellate procedure

PRACTICE AREAS

probate

estate administration

evidence

family law

QUESTIONS PRESENTED

1. Whether a married mother could testify that her children were illegitimate despite the presumption that children born during a marriage are legitimate.
2. Whether the Florida Supreme Court's decision in *Gammon v. Cobb* applied to this appeal even though it was decided after the trial court entered its order, including whether retrospective application impaired vested property rights.
3. Whether section 731.29, Florida Statutes (1973), permitted the children to establish inheritance rights as illegitimate children based on Long's written acknowledgment of paternity even though their mother was married to another man when they were born.

HOLDINGS

1. A married mother may testify that her children are illegitimate. *Gammon v. Cobb* removed the prior Florida legal impediment to such testimony, and the same rule applies in an inheritance proceeding brought by the children to establish their right to inherit from their biological father.
2. Applying *Gammon* retrospectively did not impair the appellants' vested rights because, if the three children were Long's illegitimate children, their inheritance rights vested at Long's death at the same time as the rights of Long's children born in wedlock.
3. Section 731.29, Florida Statutes (1973), may be used as an element of proof in an action by children claiming to be the illegitimate children of a decedent. The strong presumption that children born in wedlock are legitimate is rebuttable, and Long's written acknowledgment of paternity in the insurance application, made in the presence of a competent witness, supported the trial court's determination that the children were his illegitimate children and estate beneficiaries.

KEY QUOTATIONS

"A decision of a court of last resort overruling a former decision is ordinarily retrospective as well as prospective in its operation unless specifically declared by the opinion to have a prospective effect only."
(566)

"Although there is an extremely strong presumption that children born in wedlock are legitimate, such presumption is rebuttable, and we can see no impediment to the application of the above quoted statute as an element of proof in an action brought by children to establish their claim that they are illegitimate children of a decedent." (567)

FACTUAL BACKGROUND

J.D. Long was married to Refair Long when Velma Brunson became pregnant with and gave birth to three children whom she claimed were Long's. Velma remained legally married to Manuel Brunson, who had left her years earlier and never divorced her, but Long later lived with Velma and the children and ceremonially married

Velma after Refair's death. Long signed a family insurance policy application identifying the three children as his children, and the trial court relied on that written acknowledgment and other evidence to determine that they were his illegitimate children and estate beneficiaries.

PROCEDURAL HISTORY

The trial court found that three children of Velma Brunson (Long) were the illegitimate children of J.D. Long and beneficiaries of his estate under the same inheritance rules applicable to children born in lawful wedlock. The estate administrator and Long's children from his marriage to Refair Long appealed, challenging the mother's testimony regarding illegitimacy, the retrospective application of *Gammon v. Cobb*, and the sufficiency of the evidence under section 731.29, Florida Statutes. The First District affirmed.

DISPOSITION

affirmed

CASES CITED

- *Gammon v. Cobb*, 335 So. 2d 261 (Fla. 1976)
- *Lee v. Louisville & Nashville Railroad Co.*, 308 So. 2d 157 (Fla. 1st DCA 1975)
- *Phillips v. Phillips*, 287 So. 2d 149 (Fla. 1st DCA 1973)
- *Florida Forest & Park Service v. Strickland*, 154 Fla. 472, 18 So. 2d 251 (1944)

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