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Illegitimate Children's Rights in Probate Proceedings—In re Estate of James A. Palmer, Deceased

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**ILLEGITIMATE CHILDREN'S RIGHTS
IN PROBATE PROCEEDINGS—
IN RE ESTATE OF JAMES A. PALMER, DECEASED**

Robert A. McLeod[†]

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I. INTRODUCTION

The transfer of a person's assets after death has been an important element in the law beginning with the Magna Carta,¹ and is firmly rooted in American jurisprudence.² Defining children and heirs for probate

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1. June 15, 1215, Runnymede, England (addressing the transfer of property after death in least five of sixty-three paragraphs).

2. Northwest Ordinance, July 13, 1787 (discussing intestate succession in

purposes remains a difficult issue. In particular, the determination of children and heirs in an age when the birth of “illegitimate” children is common makes the proper and just determination of heirship a recurring and timely topic. The Minnesota Probate Code defines the term “child” and provides: “a person is the child of the person’s parents regardless of the marital status of the parents and the parent and child relationship may be established under the Parentage Act, sections 257.51 to 257.74.”³ The Minnesota Supreme Court recently interpreted this provision in *In re Estate of Palmer*.⁴ The court held that in a probate proceeding paternity may be established by clear and convincing evidence without having to use the Parentage Act.⁵

A. Summary of the Case

The *Palmer* case arose from the probate of the estate of James A. Palmer. The decedent, James A. Palmer, and his wife, Marie, married in 1948, and remained married for fifty-one years, until the decedent’s death in 1999.⁶ There were no children born to the decedent and his wife.⁷

Michael J. Smith was born out of wedlock on Sept. 7, 1957, to Beverly A. Smith.⁸ In 1959, the decedent was charged with and pled guilty to the crime of “illegitimacy” in a Municipal Court.⁹ At that time, Michael Smith’s birth certificate was altered to add James A. Palmer as the father with a written note “adjudication of paternity report.”¹⁰ In addition, the decedent maintained a relationship with Michael Smith throughout the child’s life.¹¹ At the time of the decedent’s death he owned a one-half interest in his primary residence located in Ramsey County, Minnesota.¹² The decedent’s wife did not own any legal interest

paragraph 2).

3. MINN. STAT. § 524.2-114 (2002).

4. 658 N.W.2d 197 (Minn. 2003).

5. *Id.*

6. *Id.* at 197-98.

7. *Id.* at 198.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* (finding that decedent visited Michael throughout childhood, hunted, golfed and made numerous trips to a lake cabin with Michael).

12. The decedent and his brother, Jerome L. Palmer, each inherited one-half of the home after the death of their father, Albert Frank Palmer, in 1983. Brief for Appellant at 7 n.1, *In re Estate of Palmer*, 658 N.W.2d 197 (Minn. 2003). Jerome subsequently died and his one-half interest in the home descended to Jerome’s wife, Lorraine Palmer, who remains the owner of the other one-half interest in the home. *Id.*

in the home.

Minnesota Statutes section 524.2-402 provides for descent and distribution of the decedent's interest in the home. Under this statute, if the decedent is survived only by his wife, then his entire interest in the home passes to his wife in fee simple.¹³ If the decedent is survived by his wife and any issue, then his wife receives a life estate in the home and the decedent's issue receive the remainder interest.¹⁴

The estate of the decedent was submitted to the court for probate and Michael Smith filed a petition for summary assignment or distribution of the decedent's intestate estate.¹⁵ Mrs. Palmer objected, maintaining that (a) Minnesota Statutes section 524.2-114(2) of the Probate Code requires the establishment of paternity before heirship can be asserted, and (b) that the time for adjudicating paternity had expired pursuant to Minnesota Statutes sections 257.51 and 257.74 of the Minnesota Parentage Act.¹⁶

The trial court dispensed with the statute of limitations, determined that the Minnesota Parentage Act was optional in probate matters, and allowed Michael Smith to establish paternity under a common law standard of clear and convincing evidence.¹⁷ Thereafter, the court issued an order granting summary assignment and distribution of estate assets, awarding Michael Smith a share in the decedent's estate.¹⁸ The order of the trial court was affirmed by the court of appeals and the supreme court.¹⁹

B. Focus of Case Note

Application of this ruling to future probate proceedings creates several issues. To understand the implications of this case, this essay will review the constitutional issues related to the probate definition of children, discuss the history of the debate on the determination of children and heirs in a probate proceeding,²⁰ identify the current frictions in the law,²¹ and analyze the effect of the current Minnesota Supreme Court ruling on prospective cases.²²

13. MINN. STAT. § 524.2-402(a)(1) (1999).

14. MINN. STAT. § 524.2-402(a)(2) (1999).

15. *Palmer*, 658 N.W.2d at 198.

16. *Id.* at 198-99.

17. *Id.*

18. *Id.*

19. *Id.* at 199-200.

20. *See infra* Part III.

21. *See infra* Part IV.

22. *See infra* Parts V-VI.

II. CONSTITUTIONAL ISSUES

It is important to first address the basic constitutional implications of inheritance for probate purposes including the constitutional implications of treating legitimate and illegitimate children differently in a probate proceeding.

A. Equal Protection

In 1977, in the case *Trimble v. Gordon*,²³ the U.S. Supreme Court declared an Illinois statute unconstitutional (a statute that was substantially identical to Minnesota Statutes section 525.173, repealed in 1996) as a denial of equal protection because the statute denied an illegitimate child an inheritance interest from the child's father.²⁴ The Court concluded that a distinction based solely upon the "legitimacy" of the child violates the guarantees of equal protection.²⁵ In 1986, the Supreme Court clarified the equal protection analysis in *Reed v. Campbell*²⁶ when it held that while states cannot make arbitrary distinctions based upon legitimacy, they may make distinctions necessary for the orderly settlement of an estate, including the imposition of statutes of limitations and other procedural restrictions in a probate proceeding.²⁷ Therefore, probate heirship statutes must always be viewed with an eye toward observing the constitutional protections afforded illegitimate children under *Trimble*, particularly when interpreting a statute that defines children for probate purposes.

Minnesota case law also has a history of protecting the interests of illegitimate children, and such interests were considered in *Palmer*.²⁸ The Appellant argued in *Palmer* that Minnesota Statutes section 524.2-114 should be read in a manner that prevents inheritance by potential illegitimate children from their putative father if paternity was not established pursuant to the Parentage Act.²⁹ While that argument implicated this constitutional issue, the Minnesota courts did not agree with Appellant's argument, noting the legislature's clear intent to protect the interests of illegitimate children.³⁰ Thus the constitutionality of the

23. 430 U.S. 762 (1977).

24. *Id.* at 775-76.

25. *Id.* at 776.

26. 476 U.S. 852 (1986).

27. *Id.* at 855-56.

28. *In re Estate of Palmer*, 658 N.W.2d 197, 199 (Minn. 2003) (citing *Voss v. Duerschel*, 425 N.W.2d 828, 830 n.7 (Minn. 1988)).

29. *Id.*

30. *See id.* at 199-200.

statute was not squarely addressed.³¹

B. The Takings Clause; Inheritance as a Property Right

The U.S. Supreme Court has provided some guidance on inheritance rights or, more accurately, the lack thereof. In *Hodel v. Irving*,³² the Supreme Court analyzed a federal statute that eliminated the devise or descent of real property on certain Indian lands if the property was valued at \$100 or less.³³ The Court considered whether such a statute implicates the takings clause without just compensation.³⁴ The Court concluded that the right to devise property is included among the bundle of rights in property because the right to exclude, via devise, is a recognized property interest.³⁵ The Court then held that such a right may not be taken without satisfying constitutional protections.³⁶

On the other hand, the Court did not find that there was any right to inherit on the part of heirs.³⁷ The Court held the heirs had not been deprived of any property interest. An inheritance is merely a hope and is not a legal interest in property. The Minnesota Supreme Court in *Palmer* briefly discussed this constitutional issue during oral argument, but because of the court's ultimate decision, this issue was not addressed.

III. HISTORY

The history of Minnesota probate law has traditionally made a harsh distinction between legitimate and illegitimate children, whereby “a child born out of wedlock was said to be *filius nullius*, the child of no one, or *filius populi*, the child of the people.”³⁸

This policy continued with the probate descent and distribution law contained in Minnesota Statutes section 525.172. This statute required an illegitimate child to meet a burden of proof different from a legitimate child before the illegitimate child could inherit from a deceased parent.³⁹ In 1978, the Minnesota Supreme Court added a clear and convincing

31. *See id.*

32. 481 U.S. 704 (1987).

33. *Id.* at 709; *see* Indian Land Consolidation Act of 1983, Pub. L. 97-459, Tit. II, 96 Stat. 2519.

34. *Id.* at 713-16.

35. *Id.* at 716.

36. *Id.* at 717-18.

37. *See id.* at 718.

38. *Weber v. Anderson*, 269 N.W.2d 892, 894 (Minn. 1978) (citing *Jung v. St. Paul Fire Dept. Relief Ass'n*, 27 N.W.2d 151, 153 (1947)) (other citation omitted).

39. MINN. STAT. § 525.172 (1971) (repealed 1985).

standard of proof to section 525.172 for actions brought after the death of the putative father because there was no statute that addressed post-mortem actions at that time.⁴⁰

In 1980, after the *Weber* decision, the legislature passed a revised Uniform Parentage Act.⁴¹ The clearly stated intent of the Act was to provide an exclusive basis for the determination of paternity.⁴² In 1985, the legislature repealed Minnesota Statutes section 525.172 (1983) and adopted portions of the then existing Uniform Probate Code. Included in the adopted portions of the Uniform Probate Code was the new section 524.2-109(2),⁴³ which began to make it easier for illegitimate children to inherit from a putative father. To carry out this intent, the Uniform Probate Code provides two alternatives to define “child” and “children.”

The first alternative is for states that have not adopted the Uniform Parentage Act. Such states were encouraged to refer to “applicable state law”—that is, to adopt the provisions of their common law.⁴⁴ Minnesota Statutes sections 524.2-109(2)(i) and (ii) (1985) articulated the law that existed before enactment of the Minnesota Parentage Act (“MPA”), and specifically provided that a child born out of wedlock would inherit from the father only if, before the death of the father, (1) the natural parents had married, or attempted to marry;⁴⁵ or (2) the paternity was established by adjudication or by acknowledgment, consent, or agreement pursuant to sections 257.51 to 257.74.⁴⁶ If the father was deceased, then paternity could be established by clear and convincing proof.⁴⁷ The 1985 law adopted the existing state common law.

The second alternative, for states that have adopted the Uniform Parentage Act (i.e., the MPA), would have repealed all of the 1985 provisions of section 524.2-109(2) and replaced it with language that simply provides “a person is the child of the person’s parents regardless of the marital status of the parents and the parent and child relationship may be established under the parentage act, sections 257.51 to 257.74.”⁴⁸ In 1985, the Minnesota legislature adopted the first option under the Uniform Probate Code. That option was wrong because it was the option intended only for states that had not adopted the Uniform Parentage Act.

40. *Weber*, 269 N.W.2d at 895.

41. The Minnesota Parentage Act (MPA), MINN. STAT. § 257.55-74 (1980).

42. *See* *Witso v. Overby*, 627 N.W.2d 63, 65-66 (Minn. 2001).

43. 1985 Minn. Laws, c. 250, § 9.

44. *See* Comment to the Uniform Probate Code, § 2-114 (2-109).

45. MINN. STAT. § 524.2-109(2)(i) (1985) (amended 1986).

46. MINN. STAT. § 524.2-109(2)(ii) (1985) (amended 1986).

47. *Id.*

48. 1986 Minn. Laws c. 3, art. 3, § 1 (codified at MINN. STAT. § 524.2-109(2)).

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The 1985 law therefore created two broad problems. First, the 1985 probate definition of "child" and "children" adhered to the old distinctions between legitimate and illegitimate children (although it did not refer to them as such). Second, it created two standards of proof and forums to determine paternity: (1) the MPA in Minnesota Statutes section 257.51 *et seq.* (1985), and (2) a probate proceeding pursuant to section 524.2-109(2) (1985). This choice was inconsistent with the MPA.

The 1986 Special Session of the legislature corrected the mistake in section 524.2-109(2) and enacted the Uniform Probate Code's second option for the definition of children. In 1994, section 524.2-109 was retitled section 524.2-114, but the substantive provisions did not change.⁴⁹

Despite this statutory crafting to eliminate distinctions between legitimate and illegitimate children, the *Palmer* decision clarified the definition of children in probate proceedings and, in effect, requires illegitimate children to carry the burden of proof that was abandoned so many years ago. Illegitimate children will find themselves at a disadvantage in a probate proceeding because despite any determination of parentage made while the child's parent was alive, the illegitimate child will have to prove paternity again after the parent's death.

IV. CURRENT FRICTION IN THE LAW

The issues related to defining children for probate purposes continue to emerge in several areas including adult adoptions and intestacy.

A. Adult Adoption

In addition to jurisdiction over intestate proceedings, the probate court has jurisdiction over wills⁵⁰ and trusts,⁵¹ including interpreting such documents. Wills and trusts often define the terms "child," "issue," or "heirs," but sometimes the definitions are absent or incomplete, or do not contemplate facts that may emerge. In such cases, the court must apply common law principles that invariably compare the intestate definitions to wills and trusts. Thus, the definition of children for intestate purposes of section 524.2-114 has implications for wills and trusts.

49. 1994 Minn. Laws 1994 c. 472, § 9.

50. See MINN. STAT. § 524.1-302 (2002).

51. See MINN. STAT. § 501B.24 (2002).

For example, in *In re Lane*,⁵² the court was required to apply the trustor's intent with the current interpretation of child and children.⁵³ The *Lane* case involved four trusts.⁵⁴ A trust beneficiary who had no children decided to adopt the adult son of his sister.⁵⁵ He did this because his sister had been disinherited by the trustor (their grandfather) but her issue were not specifically disinherited.⁵⁶ By adopting his sister's son, the son became a beneficiary of the trust.⁵⁷ At issue was whether the adult adoption was valid for purposes of making the adopted child a trust beneficiary.⁵⁸

At this point it is important to note the case of *Berston v. Minnesota Department of Public Welfare*.⁵⁹ The case is important for two reasons. First, the *Berston* court ruled that in Minnesota, you can adopt an adult.⁶⁰ Second, in dicta, the court stated that the apparent purpose of the adult adoption was to frustrate the trustor's intent.⁶¹ The court indicated that if the trust in question ever came before it on the issue of whether the adoption made the child a beneficiary, the court may hold that the adoption was intended to frustrate the trustor's intent and therefore the adopted adult is not a trust beneficiary.⁶² The *Lane* case is distinguishable from *Berston* because in *Lane* the trust documents contemplate that adopted children may become beneficiaries.⁶³ The *Lane* court also noted that it was only the trustor's granddaughter who was disinherited and not her children.⁶⁴ Thus, the adoption of the disinherited granddaughter's child was not specifically contrary to the trustor's intent.⁶⁵ The appeals court, citing case law that supports the uniform protection of the interests and rights of adopted children, upheld the trial court's ruling that the adult adoption in that case made the adopted child a beneficiary.⁶⁶

52. 660 N.W.2d 421 (Minn. Ct. App. 2003).

53. *Id.* at 425-27.

54. *See id.* at 423-24 (describing the Lane family tree and creation of trusts).

55. *See id.* at 424.

56. *See id.*

57. *See id.* at 424-25.

58. *Id.* at 427 (holding the adult adoptee the beneficiary of the trust).

59. 296 Minn. 24, 206 N.W.2d 28 (1973).

60. *Id.* at 27, 206 N.W.2d at 30.

61. *Id.*

62. *Id.*

63. *See In re Lane*, 660 N.W.2d at 426.

64. *Id.*

65. *Id.* at 427.

66. *Id.* at 426 (citing *Toombs v. Daniel*, 361 N.W.2d 801, 806 (Minn. 1985); *In re Harrington*, 311 Minn. 403, 408, 250 N.W.2d 163, 167 (1977); *In re Nash*, 265 Minn. 412, 416, 122 N.W.2d 104, 107 (1963)).

B. Contrary Interpretation of Section 2-114

Every state, other than Minnesota, that has interpreted a statute similar to Uniform Probate Code section 2-114 has ruled that the applicable state Parentage Act must be used to establish parentage in a probate proceeding.⁶⁷ Further, no state with a similar statute, other than Minnesota, applies a common law clear-and-convincing test to establish paternity in a probate proceeding.

At least one other court, the North Dakota Supreme Court, ruled that language substantially identical to Minnesota Statutes section 524.2-114(2) (1999) is intended to apply the entire (North Dakota) Parentage Act as the exclusive basis to determine the parent and child relationship for purposes of intestate succession, and did not apply a clear and convincing standard.⁶⁸ In the case, *In re Estate of Sorenson*, a married woman moved in with her brother-in-law in North Dakota. Sometime later a child was born.⁶⁹ The married woman named her husband as the father on the birth certificate.⁷⁰ After the brother-in-law died, the child sought a determination of parentage to inherit from the brother-in-law as his alleged illegitimate son.⁷¹ The court held that the probate definition of child provides that “the parent and child relationship may be established under the Uniform Parentage Act.”⁷² It also held that the statute of limitations under the North Dakota Parentage Act bars the determination of heirship.⁷³

Unlike *Sorensen*, the *Palmer* case provides that parentage may be established by clear and convincing evidence *or* by the Parentage Act.⁷⁴ At least two other courts have held that while the Parentage Act must be used to establish the parent and child relationship in probate, the Parentage Act statute of limitations does not bar a probate proceeding to establish parentage.⁷⁵ In an extensive discussion of the issue, the New Jersey Supreme Court in *Wingate v. Estate of Ryan*⁷⁶ overturned a

67. See, e.g., *In re Estate of Sorensen*, 411 N.W.2d 362 (N.D. 1987); *Wingate v. Estate of Ryan*, 693 A.2d 457 (N.J. Super. Ct. App. Div. 1997); *In re Nocita*, 914 S.W.2d 358 (Mo. 1996).

68. *In re Sorensen*, 411 N.W.2d at 364-65.

69. *Id.* at 363.

70. *Id.*

71. *Id.*

72. *Id.* at 364 (quoting N.D. CENT. CODE STAT. § 30.1-04-09 (2003)).

73. *Id.* at 366.

74. *In re Estate of Palmer*, 658 N.W.2d 197, 199 (Minn. 2003).

75. See *In re Nocita*, 914 S.W.2d 358 (Mo. 1996); *Wingate v. Estate of Ryan*, 693 A.2d 457 (N.J. 1997).

76. *Wingate*, 693 A.2d at 457.

decision by its court of appeals.⁷⁷ The supreme court ruled that while the parent and child relationship is established only as provided by the New Jersey Parentage Act, the statute of limitations under such act does not bar a determination of heirship under the Probate Code if the Probate Code statute of limitations has not run.⁷⁸

The Minnesota decision stands alone to interpret a uniform statute in a manner that does not require application of the Uniform Parentage Act even though the Act is specifically referenced for application in the probate statute.⁷⁹

V. WHAT IS CLEAR AND CONVINCING EVIDENCE?

The clear and convincing evidence standard will be applied on a case-by-case basis. A recurring issue, however, will be whether a determination of paternity while a parent is alive is admissible evidence in a probate proceeding. More specifically, the issue may be whether a determination of paternity under older paternity statutes is admissible evidence in a current probate proceeding. That very issue was a significant factor in *Palmer*, but because of the ultimate decision the issue was not resolved. The issue, however, bears mention here as it may arise again.

In *Palmer*, the respondent sought to introduce at trial an alleged conviction of paternity and guilty plea of the decedent.⁸⁰ Said conviction indicates that the decedent pled guilty to the crime of illegitimacy in 1959.⁸¹ The trial court did not specifically rule whether such a conviction is proper evidence, nor did the court of appeals or the supreme court rule on the issue.⁸²

For context, it may help to understand parentage proceedings in 1959. In 1959, paternity was initiated by the mother who filed a complaint with the municipal court.⁸³ A criminal warrant was then issued for the arrest of the father.⁸⁴ The alleged father then either posted a bond or went to jail.⁸⁵ Of course, if the alleged father simply pled

77. *Wingate v. Estate of Ryan*, 676 A.2d 144 (N.J. Super. Ct. App. Div. 1996).

78. *Wingate*, 693 A.2d at 243.

79. *See generally* MINN. STAT. §§ 257.51-.71(2003) (noting similarity to comparable sections within the Uniform Parentage Act).

80. *In re Estate of Palmer*, 658 N.W.2d 197, 198 (Minn. 2003).

81. *Id.*

82. *Id.* at 200.

83. MINN. STAT. § 257.19 (1959).

84. MINN. STAT. § 257.20 (1959).

85. MINN. STAT. § 257.21 (1959).

guilty, he would go home and would be listed on the birth certificate.⁸⁶

In *Palmer*, the trial court discussed the guilty plea and noted that “[t]here is no evidence that decedent consented to his name being placed on the [birth] certificate” (due to the conviction of paternity in 1959) and therefore “the Petitioner has not strictly met the requirements of Minnesota Statutes section 257.55 to create the presumption of paternity.”⁸⁷ By concluding that the conviction did not establish paternity under the MPA, the MPA statute of limitations would have barred any further action by the child. But the court went on to reason that the MPA was optional and the probate court could apply a clear and convincing evidence test. Without referring to the conviction, the trial court found sufficient evidence to meet the clear and convincing standard.

Currently, the question remains whether such a conviction is admissible evidence, and whether such a conviction is evidence of paternity. Two Minnesota cases have already decided that such a conviction does not satisfy the requirements of paternity for probate purposes.⁸⁸ For example, *In re Pakarinen's Estate*, the court held that a plea of guilty to the crime of illegitimacy is not a substitute for the statutory requirements to establish paternity and inheritance.⁸⁹ Further, in *In re Karger's Estate*, a conviction for the crime of illegitimacy did not substitute for the statutory requirements for parentage or inheritance.⁹⁰ These cases are directly on point in that unless the formal requirements of the MPA are satisfied, a criminal conviction of the crime of illegitimacy does not establish a parent-child relationship. If a conviction does not satisfy the MPA, then does it serve as clear and convincing evidence in probate? The issue has yet to be decided. While a criminal conviction of paternity may not satisfy the MPA, the question remains whether such a conviction is admissible evidence in a probate proceeding. Such evidence appears to be per se hearsay because the document establishing such a conviction is offered to prove the truth of the matter asserted.

The Minnesota courts could have ruled that if paternity is established under the MPA while the parent is alive, then the child would inherit on the parent's death. The result would be that an illegitimate

86. MINN. STAT. § 257.27-29 (1959).

87. *In re Estate of Palmer*, No. P4-01-5356, slip op. at 4 (Minn. Dist. Ct. Dec. 10, 2001).

88. See *In re Pakarinen's Estate*, 287 Minn. 330, 178 N.W.2d 714 (1970); *In re Karger's Estate*, 253 Minn. 542, 93 N.W.2d 137 (1958).

89. *Pakarinen*, 287 Minn. at 331, 178 N.W.2d. at 715.

90. *Karger*, 253 Minn. at 549, 93 N.W.2d at 143.

child would have to prove paternity only once. But now, a burden is placed upon an illegitimate child to prove paternity twice: first, pursuant to the MPA, while the parent is alive to receive child support; second, after the parent's death, at which time paternity must be proven by clear and convincing evidence. Such evidence might not include the evidence of paternity when the parent was alive. This means each illegitimate child carries the cost burden of proving his or her inheritance interest. This cost and evidentiary burden would not be necessary if the MPA were the sole method to establish paternity in Minnesota.

The effect of the *Palmer* decision is that Minnesota is the only state with a statute similar to Uniform Probate Code section 2-114 to require an illegitimate child to carry the burden of proof and pay the cost of meeting such burden. These are burdens and costs that legitimate children do not bear. The illegitimate child must prove his or her case twice. Legitimate children never have to prove their status because they are presumed by law to be the decedent's child.

VI. WHO IS MY CHILD?

There is one last issue to address. The test to establish paternity in Minnesota for probate purposes is clear and convincing evidence. However, the question remains: clear and convincing evidence of what? Of the deceased parent's blood, i.e., the biological child? A reasonable alternate consideration is that clear and convincing evidence may be offered to prove the child was the deceased parent's child for all substantive familial purposes (and not necessarily by blood) and therefore the child inherits as a child of the decedent.

VII. CONCLUSION

If a person dies and a child of the decedent wants to inherit from the decedent, the child will have to prove his or her case by clear and convincing evidence. That carries with it an unspoken truth that illegitimate children will have the extra burden of cost and judicial process that is not required in states that require application of the state parentage act in a probate proceeding. While legitimate children never have to prove paternity, illegitimate children, once again, are now forced to carry a special burden not carried by their legitimate siblings.