Estate of Gallegos

2021 COA 115 (2021) | Cited 0 times | Colorado Court of Appeals | August 31, 2021

SUMMARY August 26, 2021

2021COA115

No. 20CA0721, Estate of Gallegos Probate Intestate Succession Individual Adopted by Relative of Genetic Parent

As a matter of first impression, a division of the court of

appeals concludes that intestate succession for a child who was

parents is

governed by Probate Code section 15-11-119(3), C.R.S. 2020, rather

-3-

608, C.R.S. 2020, heir at law upon a final decree of adoption. The summaries of the Colorado Court of Appeals published opinions constitute no part of the opinion of the division but have been prepared by the division for the convenience of the reader. The summaries may not be cited or relied upon as they are not the official language of the division. Any discrepancy between the language in the summary and in the opinion should be resolved in favor of the language in the opinion. COLORADO COURT OF APPEALS 2021COA115

Court of Appeals No. 20CA0721 Costilla County District Court No. 17PR30006 Honorable Crista Newmyer-Olsen, Judge

In re the Estate of Joseph Celestino Gallegos, deceased.

Shennae Finan, f/k/a Shennae Jaramillo and Corpus A. Gallegos Ranches, LLLP, a Colorado limited liability limited partnership,

Appellants,

v.

Estate of Gallegos

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Patricia Vialpando,

Appellee.

JUDGMENT AFFIRMED

Division V Opinion by JUDGE GROVE J. Jones and Graham*, JJ., concur

Announced August 26, 2021

Dill Dill Carr Stonbraker & Hutchings, P.C., David R. Struthers, Denver, Colorado, for Appellant Shennae Finan

The Overton Law Firm, Thomas J. Overton, Steven R. Schumacher, Golden, Colorado, for Appellant Corpus A. Gallegos Ranches, LLLP

Law Office of Karl Kuenhold LLC, Karl Kuenhold, Denver, Colorado, for Appellee

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2020.

1 ¶ 1 In this probate case, appellants Shennae Finan, formerly

known as Shennae Jaramillo, and Corpus A. Gallegos Ranches,

LLLP,

Vialpando is an heir of Joseph Celestino Gallegos, who died

intestate. Applying section 15-11-119(3), C.R.S. 2020, we conclude

that, for the purpose of intestate succession, the parent-child

relationship between Gallegos and Vialpando was not terminated

when Vialpando was adopted in 1991. Therefore, we affirm.

I. Background

¶ 2 Gallegos died in December 2016. He had two biological

children: Vialpando and Finan. Vialpando was born in 1990 and was adopted by her maternal grandparents in 1991. However, she maintained a relationship with Gallegos throughout his life and he named her as the beneficiary of his savings and retirement accounts. Finan, who was born in 1989 and who otherwise had no relationship with Gallegos, learned that Gallegos was her father nearly two years after his death. Both biological daughters now seek a share of

¶ 3 Gallegos died without a spouse or a will, meaning that his

2 See § 15-11-103(2), C.R.S. 2020. The district court named Vialpando his sole heir and appointed her as personal representative for his estate. Once Finan learned that Gallegos was relationship with Gallegos for the purpose of intestate succession. Gallegos Ranches, a family partnership owned by the

¶ 4 The district court ruled that both Vialpando and Finan are maternal grandparents thereby terminating her parent-child relationship with Gallegos the court concluded that a 2010 amendment to the Probate Code, which allowed children adopted by relatives to inherit from their genetic parents, revived that relationship for the purpose of intestate succession. Finan and Gallegos Ranches now jointly appeal, contending that the district

court erred by applying the amended Probate Code provision

adoption was finalized.

3 II. Standard of Review

¶ 5 Statutory interpretation is a question of law that we review de

novo. See, e.g., Neher v. Neher, 2015 COA 103, ¶ 19. We first

statute as a whole. Id. We give words and phrases effect based on

their plain and ordinary meaning. Id. If a statute is clear and

unambiguous on its face, we apply it and do not resort to other

canons of statutory interpretation. Hassler v. Acct. Brokers of

Larimer Cnty., Inc., 2012 CO 24, ¶ 15.

¶ 6 In probate cases, we must construe the statutory provisions

iberally to promote a speedy and efficient system for settling a

while promoting uniformity in the administration of estates among

Oldham v. Pedrie, 2015 COA 95, ¶ 10.

III.

¶ 7

of all legal rights and obligations with respect

to the child § 19-5-211(2), C.R.S. 2020 child s

status as an heir at law . . . shall cease only upon a final decree of

adoption. § 19-3-608(1), C.R.S. 2020. Under these provisions, as

4 things stood in 1991, once Vialpando was adopted (by anyone), any

was terminated along with the parent-child relationship.

IV. Probate Code

¶ 8

succession laws. As relevant here, those amendments included a

provision allowing children who are adopted by relatives of either

genetic parent to inherit from a genetic parent who dies without a

will.

A parent-child relationship exists between both genetic parents and an individual who is adopted by a relative of a genetic parent, or by the spouse or surviving spouse of a relative of a genetic parent, but only for the purpose of the right of the adoptee or a descendant of the adoptee to inherit from or through either genetic parent.

§ 15-11-119(3). This language was in effect in 2016 at the time of

V. Analysis

¶ 9 The sole question before us is whether the 2010 amendment

applies to Vialpando. We hold that it does and as a result conclude

5 ¶ 10 egal rights and

-child

relationship was forever terminated. Because of the finality of the

upon a final decree of adoption, § 19-3-608(1), appellants assert

that the 2010 amendment to the Probate Code had no effect on

1 Because no parent-child

relationship existed in 2010, appellants contend, there was no

parent-child relationship to revive, even for the limited purpose of

intestate succession. We disagree.

1 Notably, appellants do not distinguish between an heir and an heir apparent. It is settled law that heirs can only be determined

can only be an heir apparent someone with a mere expectation of inheriting in the future. See Quintrall v. Goldsmith, 134 Colo. 410, 418, 306 P.2d 246, 250 (1957). It is upon the dece the legal title to estate property vests instantly in his heirs at law.

In re Estate of McQuade, 88 Colo. 341, 346, 296 P. 1023, 1025 (1931); see also Pierce v. Francis, 194 P.3d 505, 510 (Colo. App. 2008).

6 A. Conflict of Laws

¶ 11 Probate courts must consider the adoption and inheritance

laws in effect at the time of adoption, but the right of adopted

children to inherit is determined by the inheritance laws in effect

when the intestate died. Estate of David v. Snelson, 776 P.2d 813,

820, 815 (Colo. 1989). The Probate Code in effect at the time of

-child relationship existed

both genetic parents and an individual who is adopted by

a relative of a genetic parent . . . but only for the purpose of the

right of the adoptee or a descendant of the adoptee to inherit from

. . . either genetic parent. -11-119(3) (emphasis added). The

statute does not clarify whether it is intended to have only

prospective effect, but because Vialpando was adopted by her

maternal grandparents, it applies unless the adoption irreversibly

severed the parent-child relationship between Vialpando and Gallegos for all purposes.

¶ 12

of the adoption on Vi

-3-608(1). This

7 provision conflicts with the 2010 amendment to the Probate Code. Simply put, if section 15-11-119(3) controls, Vialpando became purposes, then she did not. To resolve this conflict, we apply principles of statutory construction to determine which provision controls.

B. Principles of Statutory Construction

¶ 13 The overriding goal of statutory construction is to effectuate Doubleday v. People, 2016 CO 3, ¶ 19. We interpret the statute within the context of its broader scheme to give consistent, harmonious, and sensible effect to all its parts. Curtis v. Hyland Hills Park & Recreation Dist., 179 P.3d 81, 83 (Colo. App. 2007). When we conclude, as we do here, that two applicable provisions are irreconcilable, we look to both specificity and recency to resolve the conflict. Dawson v. Reider, 872 P.2d 212, 214 (Colo. 1994).

¶ 14 First, the more specific statute prevails over the more general

one. § 2-4-205, C.R.S. 2020 (explaining that if a conflict between a

the

8 special . . . provision prevails as an exception to the general

provision general one sti People v.

Cooper, 27 P.3d 348, 355 (Colo. 2001), an approach that is

consistent with the goal of giving full and sensible effect to the

entire statutory scheme, see Smith v. Colo. Motor Vehicle Dealer Bd.,

200 P.3d 1115, 1118 (Colo. App. 2008).

¶ 15 Second, the more recent statute prevails over the older one.

Jenkins v. Panama Canal Ry. Co., 208 P.3d 238, 241 (Colo. 2009).

This is true even if the General Assembly did not clearly intend the

more recent statute to supplant an existing statute. See City of

Florence v. Pepper, 145 P.3d 654, 657, 660 (Colo. 2006). We

assume the legislature is aware of its enactments, and, therefore,

we conclude that by passing an irreconcilable statute at a later

date, it intended to alter the prior statute. Jenkins, 208 P.3d at

242.

¶ 16 Applying these principles here, we conclude that because the

probate statute is both more specific and more recent, it prevails

9 ¶ 17 At the outset, we recognize that the conflict between section

15-11-119(3) and section 19-3-608(1) is quite limited. It only

applies to children who have been adopted by certain relatives of their biological parents; section 19-3-608(1) continues to apply to nonrelative adoptions. Because we aim to give full and sensible effect to the entire statutory scheme, we interpret section 15-11-119(3) as carving out a limited exception to the general rule outlined in section 19-3-608(1).

¶ 18 The timing of section 15-11- our conclusion that the General Assembly intended to alter the scope of section 19-3-608. To be sure, we assume that the legislature is familiar with its previous enactments. Jenkins, 208 P.3d at 242. But it is also clear that the amendment to the Probate Code would not make sense unless the General Assembly the Child the Probate Code. See id.

¶ 19 But this does not end our inquiry. Having concluded that the 2010 amendments to the Probate Code govern our review of 10 application of the statute to ensure that it does not run afoul of the state constitution.

C. Retroactivity and Retrospectivity

¶ 20 Appellants contend that designating Vialpando heir under section 15-11-119(3) is an impermissible retroactive and retrospective application of that provision, contrary to legislative

intent and in violation of the Colorado Constitution. As they point out, the General Assembly has speci

provision of this [probate] code or of any amendment to this code shall apply retroactively if the court determines that such application would cause the provisions to be retrospective in its operation in violation of section 11 of article II of the state

c -17-101(2)(f), C.R.S. 2020.

¶ 21 A statute is retroactive if it operates on transactions that have already occurred or on rights and obligations that existed before its effective date. . Agencies, 849 P.2d 6, 11

(Colo. 1993). Retroactive application of a statute is generally disfavored by both the common law and statute. Id.; § 2-4-202, C.R.S. 2020. But retroactive application of a civil statute is not

11 necessarily unconstitutional: it is permitted where the statute effects a change that is procedural or remedial. People v. D.K.B., 843 P.2d 1326, 1332 (Colo. 1993). Because some retroactively applied legislation is constitutional while some is not, Colorado courts mark this distinction with the term contained in the constitutional provision to describe a statute

whose retroactive application is unconstitutional. In re Estate of DeWitt, 54 P.3d 849, 854 (Colo. 2002); Ficarra, 849 P.2d at 12.

¶ 22 Contrary to a aims, the district court did not apply

section 15-11-119(3) either retroactively or retrospectively. Because

Quintrall v. Goldsmith, 134 Colo. 410, 419, 306 P.2d 246, 250-51

(1957), Vialpando could not have permanently lost any right to

of his death, based on the Probate Code in effect at the time of his

death.

¶ 23 When Gallegos died in 2016, the court appropriately applied

the existing -child

12 Gallegos and Vialpando. § 15-11-119(3). Had Gallegos died

bet

enactment of the 2010 Probate Code amendment, Vialpando would

not be considered an heir. But that is not what happened.

Gallegos died after the 2010 Probate Code amendment was enacted,

so Vialpando appropriately inherits her share of his estate through

intestate succession. This means that applying the 2010

amendment to the Probate Code to the intestate succession of

D. Vested Rights

¶ 24 We find the foregoing statutory analysis dispositive of the

a 1991, Gallegos had a vested right to be free from any future legal

obligations that would result from being her biological father, even

after his death. We find this unpersuasive.

¶ 25 Appellants contend that the focus should properly be on

s vested rights to be free of any obligations to Vialpando,

and parental obligation; it is a legal right which accrues automatically to

13 In re Estate of Bomareto, 757

P.2d 1135, 1137 (Colo. App. 1988) (citing Quintrall, 134 Colo. 410,

306 P.2d 246), overruled on other grounds by Estate of David, 776

P.2d at 820. In their briefing, appellants did not cite any cases

supporting their contention that s right to be free of

parental obligations also applied to intestate succession by his

heirs, nor could they point us to any such cases during oral

argument.

¶ 26 Instead, appellants cite the statutory language of the 2010

Probate Code amendment in support of their contention that

s vested right is not affected by the revision to the statute.

Section 15-17-101(2) An act done . . .

before the effective date of an amendment to this code, in any

proceeding is not impaired by this code or by any amendment to

this code. a doption of

Vialpando was not impaired or otherwise affected by the 2010

amendment to the Probate Code. Throughout his life, Gallegos

remained free of any legal rights or obligations with respect to

Vialpando.

14 ¶ 27 If, as appellants contend, adoption means that a biological parent has a vested right to have no legal connection to the child at any point in the future, and this vested right supersedes statutory amendment to the Probate Code meaningless regardless of the date of the adoption. Because interpretation leading to an illogical or absurd result will not be followed, Frazier v. People, 90 P.3d 807, 811 (Colo. 2004), we decline to adopt this interpretation.

VI. Conclusion

¶ 28 The judgment is affirmed.

JUDGE J. JONES and JUDGE GRAHAM concur.