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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 17-0452 – *Hall v. Hall*

WORKMAN, C. J., dissenting, joined by KETCHUM, J.:

Without question, Michaelin Brooke Hall is entitled to inherit the estate of her biological father, the decedent, Michael Eugene Hall. As explained below, Michaelin's right to inherit flows from her relationship as his biological child in accordance with our intestacy statutes. Even though *his* parental rights were legally terminated, *her* rights as his child and descendant remain intact. By creating new law extinguishing that valuable right, the majority fails to apply the plain language of the statute and ignores compelling precedent. Because this disturbing decision piles even more hardship on this child whose life was already severely damaged by parental abuse and neglect, I vehemently dissent.

Our analysis begins with the general premise that "[a]ny part of a decedent's estate not effectively disposed of by will passes by intestate succession to the decedent's heirs as prescribed in this code[.]" W.Va. Code § 42-1-2(a) (2014). We then turn to the pertinent statute, West Virginia Code § 42-1-3a (2014), which provides, in relevant part:

> Any part of the intestate estate not passing to the decedent's surviving spouse under section three [§ 42-1-3] of this article, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals designated below who survive the decedent:
>
> (a) To the decedent's descendants by representation;
>
> (b) If there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent[.]

Under the plain language of this statute, Michaelin—the decedent's only child and surviving descendant—inherits his entire estate because he left no surviving spouse. Case closed.

The majority's convoluted path to the contrary conclusion fails to respect the most basic of all canons of statutory interpretation: statutes mean what they plainly say.[1] In its tortured analysis, the majority reasons that the impediments to Michaelin's inheritance are the statutory definitions of "descendant," West Virginia Code § 42-1-1(5) (2014), and "parent," *Id*. § 42-1-1(26). Essentially, the majority reasons that after his parental rights were terminated, Mr. Hall would not meet the definition of "parent" for purposes of the descent and distribution statutes. The majority then abruptly leaps to the unsupported conclusion that their parent-child relationship was "utterly severed" to such a degree that Michaelin no longer remained Mr. Hall's "descendant."

The majority is half right: the decedent, Mr. Hall, would not meet the definition of "parent" for purposes of the descent and distribution statutes. All this means, however, is that *he* would not be entitled to inherit from Michaelin *if* she predeceased him. However, that hypothetical question is not before us. Although our statutes do not

[1] "As Chief Justice Marshall said more than a century and a half ago: [T]he intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words there is no room for construction." *Watt v. Alaska*, 451 U.S. 259, 285-86 (1981) (Stewart, J., dissenting) (quotation marks and citation omitted).

specifically address that issue, I agree with the majority that Mr. Hall lost those rights after he voluntarily relinquished all his parental rights as a result of his abuse of this child.[2]

Nevertheless, it makes little sense to construe West Virginia Code § 42-1-3a as creating a per se statutory barrier to the reverse—Michaelin's ability to inherit from Mr. Hall. The central flaw in the majority's reasoning is that it assumes the rights flowing from the parent-child relationship are reciprocal here when under the instant circumstances, they are not.

Significantly, the majority fails to acknowledge that the pertinent statutes which control the distribution of the decedent's estate were modeled upon the 1990 Revised Uniform Probate Code ("RUPC").[3] In fact, West Virginia was the first state to enact the

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[2] *See* W.Va. Code § 49-4-604(6) (2015) (providing court shall terminate parental *rights* of abusing parent).

"A majority of [] states have adopted a statutory exception to the mandatory succession by intestacy statutes applicable to children to extinguish the inheritance rights of 'bad parents.'" *New Jersey Div. of Youth & Family Servs. v. M.W.*, 942 A.2d 1, 16 (N.J. Super. App. Div. 2007). Most "are directed to parental abandonment and non-support, although several preclude inheritance by a parent who has been convicted of crimes against the child including physical abuse, sexual abuse, and endangering the child's welfare." *Id*.

[3] In 1969, the Uniform Probate Code was promulgated. Revised Article II of the Uniform Probate Code, 8 U.L.A. 76 at prefatory note (Supp. 1994). In 1990, a Revised Article II of the Uniform Probate Code was approved by the National Conference of Commissioners on Uniform State Laws. *Id.* at 75 at historical notes. *See also* Bruce H. Mann, *Formalities and Formalism in the Uniform Probate Code*, 142 U. Pa. L. Rev. 1033, 1048 (1994) ("The statutory rules of intestate succession are default rules that approximate what most testators do in their wills anyway—provide for their immediate families.").

intestacy provisions of the RUPC. *Mongold v. Mayle*, 192 W.Va. 353, 355, 452 S.E.2d 444, 446 (1994). West Virginia Code § 42-1-3a tracks the same language as the RUPC, as well as the Uniform Probate Code ("UPC"), 8 U.L.A. 91 (2010), when dealing with intestate distribution of an estate which does not pass to a surviving spouse.[4] Therefore, references to the RUPC/UPC are important in order to facilitate an understanding of the statutes at issue in the case before us. *See* John W. Fisher, II, Scott A. Curnutte, *Reforming the Law of Intestate Succession and Elective Shares: New Solutions to Age-Old Problems*, 93 W. Va. L. Rev. 61 (1990) (providing extensive discussion and comparison of provisions of RUPC and statutory law of West Virginia).

In comparison to the provision of West Virginia law dealing with intestacy inheritance, the UPC has the same definition of "descendant" and "parent." "'Descendant' of an individual means all of his [or her] descendants of all generations, with the

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[4] The UPC provides:

> (a) Any part of the intestate estate not passing to a decedent's surviving spouse under Section 2-102, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:
>
> (1) to the decedent's descendants by representation;
>
> (2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives[.]

Id. § 2-103.

relationship of parent and child at each generation being determined by the definition of child and parent contained in this [code]." UPC § 1-201(9) and W.Va. Code § 42-1-1(5). "'Parent' includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this [code] by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent." UPC § 1-201(32) and W.Va. Code § 42-1-1(26).

In contrast, however, West Virginia Code Chapter 42 contains no definition of "child" when the UPC does define the term. The UPC provides that: "'Child' includes an individual entitled to take as a child under this [code] by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant." *Id*. § 1-201(5). It is not disputed that Michaelin is Mr. Hall's biological daughter. Therefore, she plainly meets this definition of child.

Notably, the UPC does not extinguish the right of the *child* to inherit from his or her biological parent following a parental termination proceeding, but it does extinguish the *parent's* right to inherit from his or her child in this context.[5] Thus, the UPC

[5] The UPC provides that a parent is barred from inheriting from or through a child of the parent if: the parent's parental rights were terminated or the child died before reaching 18 years of age and there is clear and convincing evidence that immediately before the child's death the parental rights of the parent could have been terminated under state law on the basis of nonsupport, abandonment, abuse, neglect, or other actions or inactions of the parent toward the child. UPC § 2.114(c).

teaches that there is unilateral extinguishment of intestacy rights in these matters under the same definition of "descendant." Yet, the majority wholly ignores the UPC's express endorsement of the more sensible result here. Also, among states that have statutes explicitly addressing the effect of the parental termination order on the child's inheritance rights, there is often no reciprocity of rights; some expressly bar the parent's right to inherit after termination, but also expressly retain the child's right to inherit (until the child is adopted). Richard L. Brown, *Disinheriting the "Legal Orphan": Inheritance Rights of Children After Termination of Parental Rights*, 70 Mo. L. Rev. 125, 131 (Winter 2005).

Consistent with the UPC, West Virginia statutes dealing with descent and distribution contain no language purporting to divest a child's right of inheritance under these facts. *See* W.Va. Code Chapter 42. Therefore, the termination of Mr. Hall's parental rights in no way negates the fact that Michaelin is his child, descendant, and sole beneficiary under West Virginia Code § 42-1-3a. One would have thought it too obvious to mention that this Court is duty bound to apply the statute, not amend it.

The disinheritance of children of terminated parents is not only inconsistent with the plain language of the statute, it runs counter to the broader scheme of intestate succession. "In the American legal system, inheritance rights are almost invariably based on the parent-child relationship—children inherit from their biological mothers and fathers." Brown, *Disinheriting the "Legal Orphan": Inheritance Rights of Children After Termination of Parental Rights*, 70 Mo. L. Rev. at 126. There are exceptions to this rule;

for instance, adopted children inherit from their adoptive parents, not their biological parents. *Id*.[6] However, there is simply no "rationale for extinguishing the right of children to inherit from their terminated biological parents [in this context]." *Id*. at 127.

Moreover, the majority's central premise—that Michaelin lost her statutory rights to inherit from her biological father through intestate succession when *his* parental rights were terminated because of *his* child abuse—does not square with our case law and the sound public policies that underlie our child welfare system. The primary goal of a child abuse and neglect proceeding is to further the welfare of the child.[7] And this Court has made it abundantly clear that parental termination proceedings do not extinguish certain rights enjoyed by a child, e.g., the loss of statutory rights is not reciprocal in this context. In *In re: Ryan B.*, 224 W.Va. 461, 686 S.E.2d 601 (2009), we held that a parent whose parental rights have been terminated must typically continue paying child support, so long as such payments are in the child's best interest.[8] *See also* Syl. Pt. 7, *In re: Stephen*

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[6] For example, under West Virginia Code § 48-22-703 (2015), Michaelin would no longer be entitled to inherit from Mr. Hall's estate through intestate succession had Michaelin's mother remarried and Michaelin was adopted by her new step-father before Mr. Hall died.

[7] *See* Syl. Pt. 2, *In the Interest of Kaitlyn P.*, 225 W.Va. 123, 690 S.E.2d 131 (2010) ("'"In a contest involving the custody of an infant the welfare of the child is the polar star by which the discretion of the court will be guided." Syl. pt. 1, *State ex rel. Cash v. Lively*, 155 W.Va. 801, 187 S.E.2d 601 (1972).' Syllabus Point 4, *State ex rel. David Allen B. v. Sommerville*, 194 W.Va. 86, 459 S.E.2d 363 (1995).").

[8] *See Id*. at 462-63, 686 S.E.2d at 602-03, Syl. Pt. 2 ("A circuit court terminating a parent's parental rights pursuant to *W.Va. Code*, § 49-6-5(a)(6), must ordinarily require that the terminated parent continue paying child support for the child, pursuant to the

Tyler R., 213 W.Va. 725, 584 S.E.2d 581 (2003) ("Pursuant to the plain language of W.Va. Code § 49-6-5(a)(6) (1998) (Repl.Vol. 2001), a circuit court may enter a dispositional order in an abuse and neglect case that simultaneously terminates a parent's parental rights while also requiring said parent to continue paying child support for the child(ren) subject thereto.").

Under this precedent, Michaelin's rights under our intestacy statutes remain intact following the parental termination proceeding until extinguished for some other reason, such as adoption. There is simply no plausible basis for inferring that the Legislature intended to disinherit the child in this equation. The gaping hole in the majority opinion is its failure to answer the crucial question upon which all else depends: Where is the statutory support for this exception to the clear statutory command? That question is unanswered because there is none. Consequently, the majority's adoption of such exception here amounts to a blatant judicial override of the statute. However, this Court is not at liberty to read into a statute that which simply is not there.

> "It is not the province of the courts to make or supervise legislation, and a statute may not, under the guise of interpretation, be modified, revised, amended, distorted, remodeled, or rewritten," *Subcarrier Communications, Inc. v. Nield*, 218 W.Va. 292, 299 n.10, 624 S.E.2d 729, 736 n.10

Guidelines for Child Support Awards found in *W.Va. Code*, § 48-13-101, et seq. [2001]. If the circuit court finds, in a rare instance, that it is not in the child's best interest to order the parent to pay child support pursuant to the *Guidelines* in a specific case, it may disregard the *Guidelines* to accommodate the needs of the child if the court makes that finding on the record and explains its reasons for deviating from the *Guidelines* pursuant to *W.Va. Code*, § 48-13-702, [2001].").

> (2005) (internal quotations and citations omitted). If the Legislature has promulgated statutes to govern a specific situation yet is silent as to other related but unanticipated corresponding situations, it is for the Legislature to ultimately determine how its enactments should apply to the latter scenarios.

Soulsby v. Soulsby, 222 W.Va. 236, 247, 664 S.E.2d 121, 132 (2008).[9]

The majority decision, no matter how much it says otherwise, ultimately crafts a judge-made exception to the general rule regarding intestate succession plainly set forth in West Virginia Code § 42-1-3a. But not one of the cases on which the majority relies supports the extraordinary premise that courts can create out of whole cloth such an exclusion.

Accordingly, this Court should have applied the clear language of West Virginia Code § 42-1-3a and the foundational principles of *In re: Ryan B.* to recognize Michaelin's statutory right to inherit from Mr. Hall through intestate succession continued

[9] *See also Banker v. Banker*, 196 W.Va. 535, 546-47, 474 S.E.2d 465, 476-77 (1996) ("It is not for this Court arbitrarily to read into [a statute] that which it does not say. Just as courts are not to eliminate through judicial interpretation words that were purposely included, we are obliged not to add to statutes something the Legislature purposely omitted." (citing *Bullman v. D & R Lumber Company*, 195 W.Va. 129, 464 S.E.2d 771 (1995); *Donley v. Bracken*, 192 W.Va. 383, 452 S.E.2d 699 (1994))). Indeed, "'the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines.'" *State ex rel. Blankenship v. Richardson*, 196 W.Va. 726, 735, 474 S.E.2d 906, 915 (1996) (quoting *Lewis v. Canaan Valley Resorts, Inc.*, 185 W.Va. 684, 692, 408 S.E.2d 634, 642 (1991)).

after his parental termination proceeding. The majority's decision is wrong, wrong, wrong, both from a legal and human perspective.

Because there is nothing legally right or just about this decision, I respectfully dissent. I am authorized to state that Justice Ketchum joins this dissent.