IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

January 2018 Term

No. 17-0452

FILED
May 11, 2018
released at 3:00 p.m.
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MICHAELIN BROOKE HALL,
Plaintiff Below, Petitioner,

V.

LONA SUE HALL, ROBERT EUGENE HALL, LORETTA HALL (aka LORETTA JENKINS), and SAMANTHA HAZELWOOD,
Defendants Below, Respondents.

Appeal from the Circuit Court of Mercer County
Honorable Derek C. Swope, Judge
Civil Action No. 16-C-71-DS
AFFIRMED

Submitted: April 3, 2018
Filed: May 11, 2018

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JUSTICE DAVIS delivered the Opinion of the Court.

CHIEF JUSTICE WORKMAN and JUSTICE KETCHUM dissent and reserve the right to file dissenting opinions.

SYLLABUS BY THE COURT

1. "'A statute should be so read and applied as to make it accord with the spirit, purposes and objects of the general system of law of which it is intended to form a part; it being presumed that the legislators who drafted and passed it were familiar with all existing law, applicable to the subject matter, whether constitutional, statutory or common, and intended the statute to harmonize completely with the same and aid in the effectuation of the general purpose and design thereof, if its terms are consistent therewith.' Syllabus Point 5, *State v. Snyder*, 64 W. Va. 659, 63 S.E. 385 (1908)." Syllabus point 5, *Community Antenna Service, Inc. v. Charter Communications VI, LLC*, 227 W. Va. 595, 712 S.E.2d 504 (2011).

2. "A final order terminating a person's parental rights, as the result of either an involuntary termination or a voluntary relinquishment of parental rights, completely severs the parent-child relationship, and, as a consequence of such order of termination, the law no longer recognizes such person as a 'parent' with regard to the child(ren) involved in the particular termination proceeding." Syllabus point 4, *In re Cesar L.*, 221 W. Va. 249, 654 S.E.2d 373 (2007).

3. A child may not inherit under W. Va. Code § 42-1-3a(a) (1992) (Repl.

Vol. 2014) from a biological parent who dies intestate after his or her parental rights to said child have been either voluntarily relinquished or involuntarily terminated.

4. "This Court does not sit as a superlegislature, commissioned to pass upon the political, social, economic or scientific merits of statutes pertaining to proper subjects of legislation. It is the duty of the Legislature to consider facts, establish policy, and embody that policy in legislation. It is the duty of this Court to enforce legislation unless it runs afoul of the State or Federal *Constitutions*." Syllabus point 2, *Huffman v. Goals Coal Co.*, 223 W. Va. 724, 679 S.E.2d 323 (2009).

Davis, Justice:

In this appeal, this Court is asked to determine whether the biological child of a deceased parent whose parental rights were terminated prior to his death is a descendant of the parent for purposes of the descent and distribution provisions of the West Virginia Code, W. Va. Code § 42-1-1 *et seq.*, when the parent dies intestate. Based upon our review of the parties' arguments, the appendix record, and the pertinent authorities, and for the reasons explained below, we find that such a child does not meet the statutory definition of a descendant and, therefore, does not qualify to inherit under the statutory provisions pertaining to descent and distribution. Accordingly, we affirm the circuit court's decision in this case.

I.

FACTUAL AND PROCEDURAL HISTORY

The following facts are not disputed. Petitioner, Michaelin Brooke Hall ("Michaelin"), is the only child born of a marriage between Kathy Hall French and Michael Eugene Hall ("Michael Hall"). At some point during the marriage, the Department of Health and Human Services filed an abuse and neglect petition against Michael Hall alleging that he abused Michaelin.[1] Thereafter, he voluntarily relinquished his parental rights with respect

[1]Michael Hall also was criminally charged for his abuse of Michaelin and sentenced to a lengthy term of incarceration. The appendix record submitted in connection (continued...)

to Michaelin in April 2008. The circuit court acknowledged Michael Hall's voluntary relinquishment of his parental rights and entered an order legally terminating the same.[2] As a further result of the proceedings, Kathy Hall French and Michael Hall divorced in July 2008. Michael Hall never remarried and apparently fathered no other children. He died intestate on April 3, 2011.

On February 26, 2016, Kathy Hall French, as mother and next friend of Michaelin, filed the instant action in the Circuit Court of Mercer County claiming that Michaelin is the rightful heir to the estate of the decedent, Michael Hall. The defendants named in the complaint are Lona Sue Hall, Robert E. Hall, Loretta Hall (aka Loretta Jenkins), and Samantha Hazelwood (collectively "the Defendants").[3] Robert E. Hall, Loretta Hall, and Samantha Hazelwood each filed, *pro se*, a handwritten answer to the complaint. On January 5, 2017, Kathy Hall French filed a motion for summary judgment. Thereafter, on January

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[1](...continued)
with this appeal does not contain any documents from the abuse and neglect or criminal proceedings. However, the circuit court's order observes that "[t]he records of the companion juvenile abuse and criminal cases referenced herein are replete with evidence of the abuse [Michaelin] suffered while in the care of [Michael Hall]."

[2]The circuit court order was not included in the appendix record submitted on appeal.

[3]It appears that defendants Lona Sue Hall and Robert E. Hall are the parents of the decedent Michael Hall, Loretta Hall (aka Loretta Jenkins) is the decedent's sister, and Samantha Hazelwood is the decedent's niece. Lona Sue Hall was appointed administratrix of Michael Hall's estate.

11, 2017, an amended complaint was filed removing Kathy French Hall as plaintiff and naming Michaelin, who had reached the age of majority, as plaintiff. The Defendants timely filed a joint response to the motion for summary judgment along with their own motion for summary judgment. The circuit court heard arguments on the motions and, by order entered on April 13, 2017, granted summary judgment to the Defendants. This appeal followed.

II.

STANDARD OF REVIEW

The case *sub judice* is before this Court on appeal from an order granting summary judgment. "A circuit court's entry of summary judgment is reviewed *de novo*." Syl. pt. 1, *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994). With respect to our review of a summary judgment order, we have explained that, "[i]n reviewing a circuit court's order granting summary judgment this Court, like all reviewing courts, engages in the same type of analysis as the circuit court." *Fayette Cty. Nat'l Bank v. Lilly*, 199 W. Va. 349, 353 n.8, 484 S.E.2d 232, 236 n.8 (1997), *overruled on other grounds by Sostaric v. Marshall*, 234 W. Va. 449, 766 S.E.2d 396 (2014). Thus, we are mindful that "[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. pt. 3, *Aetna Cas. & Sur. Co. v. Federal Ins. Co. of New York*, 148 W. Va. 160, 133 S.E.2d 770 (1963). Because this case turns on the meaning of the relevant statutes, we

finally note that "[i]nterpreting a statute or an administrative rule or regulation presents a purely legal question subject to *de novo* review." Syl. pt. 1, *Appalachian Power Co. v. State Tax Dep't*, 195 W. Va. 573, 466 S.E.2d 424 (1995). Guided by these standards, we proceed to our consideration of the issue raised.

III.

DISCUSSION

Michaelin assigns error to the circuit court's award of summary judgment to the Defendants, which was based upon its conclusion that a child may not inherit from a parent who died intestate after his parental rights to said child were legally terminated. Michaelin encourages this Court to rely on the West Virginia Child Welfare Act, found at W. Va. Code § 49-1-101 *et seq.*, along with precedent of this Court that allows a parent's obligation to support a child to continue beyond the termination of parental rights, to reverse the circuit court's ruling on this novel issue.

Respondents Lona Sue Hall and Robert E. Hall ("the Halls")[4] contend that the circuit court's order was correct insofar as the West Virginia descent and distribution statutes do not permit the child of a parent whose parental rights have been terminated to share in the

[4]Defendants Loretta Hall (aka Loretta Jenkins) and Samantha Hazelwood did not file a response to this appeal.

parent's intestate estate. The Halls recognize that continuing financial support following termination pursuant to the Child Welfare Act is a right belonging to the child and is in the child's best interest. They point out, however, that the laws of intestate succession are designed to meet a different goal, *i.e.*, to distribute real and personal property in accordance with what a decedent would have done in a will. *See King v. Riffee*, 172 W. Va. 586, 589, 309 S.E.2d 85, 87-88 (1983) ("Our laws concerning intestate succession are designed to effect the orderly distribution of property for decedents who lacked either the foresight or the diligence to make wills. The purpose of these statutes, then, is to provide a distribution of real and personal property that approximates what decedents would have done if they had made a will.").

Before engaging in our discussion of the relevant statutory provisions, we pause to observe that "[t]he primary object in construing a statute is to ascertain and give effect to the intent of the Legislature." Syl. pt. 1, *Smith v. State Workmen's Comp. Comm'r*, 159 W. Va. 108, 219 S.E.2d 361 (1975). To this end, "[w]e look first to the statute's language. If the text, given its plain meaning, answers the interpretive question, the language must prevail and further inquiry is foreclosed." *Appalachian Power Co.*, 195 W. Va. at 587, 466 S.E.2d at 438. However, "[a] statute that is ambiguous must be construed before it can be applied." Syl. pt. 1, *Farley v. Buckalew*, 186 W. Va. 693, 414 S.E.2d 454 (1992).

Although the parties to this appeal each rely on a distinct statutory scheme to support their respective arguments as to how this matter should be resolved, it is necessary for this Court to consider both relevant statutory schemes in settling this appeal. This is because

> "[a] statute should be so read and applied as to make it accord with the spirit, purposes and objects of the general system of law of which it is intended to form a part; it being presumed that the legislators who drafted and passed it were familiar with all existing law, applicable to the subject matter, whether constitutional, statutory or common, and intended the statute to harmonize completely with the same and aid in the effectuation of the general purpose and design thereof, if its terms are consistent therewith." Syllabus Point 5, *State v. Snyder*, 64 W. Va. 659, 63 S.E. 385 (1908).

Syl. pt. 5, *Community Antenna Serv., Inc. v. Charter Commc'ns VI, LLC*, 227 W. Va. 595, 712 S.E.2d 504 (2011). Accordingly, we first will consider the Child Welfare Act. We then will examine the relevant statutory provisions related to descent and distribution. Finally, we will endeavor to reconcile the two in a manner that accords with the intent of the Legislature.

With respect to the termination of parental rights under the Child Welfare Act, this Court has recognized that

> [a] final order terminating a person's parental rights, as the result of either an involuntary termination or a voluntary relinquishment of parental rights, completely severs the parent-child relationship, and, as a consequence of such order of termination, the law no longer recognizes such person as a

> "parent" with regard to the child(ren) involved in the particular termination proceeding.

Syl. pt. 4, *In re Cesar L.*, 221 W. Va. 249, 654 S.E.2d 373 (2007). However, this Court has recognized that, while termination completely severs a parent's rights, certain of the child's rights persist. One such right that has been recognized by this Court is the right to continuing support. As Michaelin points out, this Court has ruled that a child's right to the financial support of his or her biological parents continues beyond the termination of parental rights:

> Pursuant to the plain language of W. Va. Code § 49-6-5(a)(6) (1998) (Repl. Vol. 2001) [now W. Va. Code § 49-4-604(b)(6) (2015) (Repl. Vol. 2015)[5]], 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.

Syl. pt. 7, *In re Stephen Tyler R.*, 213 W. Va. 725, 584 S.E.2d 581 (2003) (emphasis and footnote added).

At the time of the *In re Stephen Tyler R.* decision, W. Va. Code § 49-6-5(a)(6) provided, in relevant part, that a circuit court shall "[u]pon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental,

[5]In 2015, the Legislature re-codified the Child Welfare Act. The provision cited in Syllabus point 7 of *In re Stephen Tyler R.*, 213 W. Va. 725, 584 S.E.2d 581 (2003), is now found at W. Va. Code § 49-4-604(b)(6) (2015) (Repl. Vol. 2015).

custodial or guardianship *rights and/or responsibilities* of the abusing parent . . . ." (Emphasis added). Thereafter, in 2006, the Legislature amended W. Va. Code § 49-6-5(a)(6) by replacing "and/or" with simply "and." It is the 2006 version of the statute that was in effect at the time Michael Hall's parental rights were terminated. *See* W. Va. Code § 49-6-5(a)(6) (2006) (Repl. Vol. 2009).

This Court later addressed the amended version of W. Va. Code § 49-6-5(a)(6) and reaffirmed the *Stephen Tyler R*. holding when we held that

> [t]he Legislature's 2006 amendment of *W. Va. Code*, § 49-6-5(a)(6), [now W. Va. Code § 49-4-604(b)(6)] changing the statute's "guardianship rights and/or responsibilities" language to "guardianship rights and responsibilities" was not intended to relieve parents who have their parental rights terminated in an abuse and neglect proceeding from providing their child(ren) with child support.

Syl. pt. 1, *In re Ryan B*., 224 W. Va. 461, 686 S.E.2d 601 (2009). The *Ryan B*. Court went on to conclude that

> [a] circuit court terminating a parent's parental rights pursuant to *W. Va. Code*, § 49-6-5(a)(6) [now W. Va. Code § 49-4-604(b)(6)], must ordinarily require that the terminated parent continue paying child support for the child, pursuant to the *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].

Syl. pt. 2, *In re Ryan B*., 224 W. Va. 461, 686 S.E.2d 601. In reaching these holdings, the Court in *Ryan B.* observed that

> case law from this Court as well as courts around the country have held that an obligation of support is owed to a child by both of his parents until such time as the child is placed in the permanent legal custody of another guardian/parent/obligor, such as in adoption. As this Court has frequently emphasized, the best interest of the child is the polar star by which all matters affecting children must be guided. *See* Syllabus Point 7, *In re Brian D*., 194 W. Va. 623, 461 S.E.2d 129 (1995) ("Cases involving children must be decided not just in the context of competing sets of adults' rights, but also with a regard for the rights of the child(ren)."). This Court has previously stated that child support obligations are not only responsibilities parents owe to their children, ***they are also rights which belong to children***. ***"Child support is a right which belongs to the child."*** *Kimble v. Kimble*, 176 W. Va. 45, 49, 341 S.E.2d 420, 424 (1986), *quoting Armour v. Allen*, 377 So. 2d 798, 799-800 (Fla. Dist. Ct. App. 1979). ***Allowing a parent who voluntarily relinquishes his/her parental rights to avoid this right that belongs to the child goes against the overall goal of the child welfare statutory scheme and is in opposition to our well established case law***.

In re Ryan B., 224 W. Va. at 467, 686 S.E.2d at 607 (footnotes omitted; bold emphasis added). Although *Ryan B.* involved a voluntary relinquishment, as does the instant matter, the Court made clear that "[t]he issue presently before us is applicable to both voluntary and involuntary relinquishments." *Id*. at 465 n.3, 686 S.E.2d at 605 n.3.

Insofar as this Court has made clear that the termination of parental rights does not extinguish certain rights belonging to the child, such as the right to child support, it

would seem to follow, based upon the same rationale focusing on the best interests of the child, that it also would be in a child's best interest to inherit from a terminated parent who dies intestate. Indeed, numerous states have adopted legislation allowing a child to retain the right to inherit from a parent whose parental rights have been terminated.[6] Unfortunately,

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[6]*See, e.g.*, Ariz. Rev. Stat. Ann. § 8-539 (1970) ("An order terminating the parent-child relationship shall divest the parent and the child of all legal rights, privileges, duties and obligations with respect to each other *except the right of the child to inherit and support from the parent*. This right of inheritance and support shall only be terminated by a final order of adoption." (emphasis added)); Ark. Code Ann. § 9-27-341(c)(1) (2017) ("An order terminating the relationship between parent and juvenile divests the parent and the juvenile of all legal rights, powers, and obligations with respect to each other, including the right to withhold consent to adoption, *except the right of the juvenile to inherit from the parent, that is terminated only by a final order of adoption.*" (emphasis added)); D.C. Code Ann. § 16-2361(a) (1998) ("An order terminating the parent and child relationship divests the parent and the child of all legal rights, powers, privileges, immunities, duties and obligations with respect to each other, *except the right of the child to inherit from his or her parent*. The right of inheritance of the child shall be terminated only by a final order of adoption." (emphasis added)); Kan. Stat. Ann. § 38-2269(g)(1) (2008) ("A termination of parental rights under the code *shall not terminate the right of a child to inherit from or through a parent*. Upon such termination all rights of the parent to such child, including, such parent's right to inherit from or through such child, shall cease." (emphasis added)); Ky. Rev. Stat. Ann. § 625.044 (1988) ("Following the entry of an order voluntarily terminating parental rights in a child, *the child shall retain the right to inherit from his parent under the laws of descent and distribution until the child is adopted*." (emphasis added)); Ky. Rev. Stat. Ann. § 625.104 (1988) ("Following the entry of an order involuntarily terminating parental rights in a child, *the child shall retain the right to inherit from his parent under the laws of descent and distribution until the child is adopted*." (emphasis added)); La. Child. Code Ann. art. 1038 (1997) ("A final judgment terminating parental rights relieves the child and the parent against whom the judgment is rendered of all of their legal duties and divests them of all of their legal rights with regard to one another except as provided in Article 1037.1, and except: (1) *The right of the child to inherit from his biological parents and other relatives*." (emphasis added)); Mont. Code Ann. § 41-3-611(1) (2003) ("An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title

(continued...)

West Virginia is not among those states that have enacted specific legislation on this topic.

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[6](...continued)
40, chapter 6, part 2, and Title 41, chapter 3, part 2, *except the right of the child to inherit from the parent*." (emphasis added)); Nev. Rev. Stat. Ann. § 128.110(1) (2011) ("The termination of parental rights pursuant to this section *does not terminate the right of the child to inherit from his or her parent or parents, except that the right to inherit terminates if the child is adopted* as provided in NRS 127.160." (emphasis added)); N.C. Gen. Stat. Ann. § 7B-1112 (2012) ("An order terminating the parental rights completely and permanently terminates all rights and obligations of the parent to the juvenile and of the juvenile to the parent arising from the parental relationship, *except that the juvenile's right of inheritance from the juvenile's parent shall not terminate until a final order of adoption is issued*." (emphasis added)); Okla. Stat. Ann. tit. 10A, § 1-4-906(A) (2009) ("The termination of parental rights terminates the parent-child relationship, including: 1. The parent's right to the custody of the child; 2. The parent's right to visit the child; 3. The parent's right to control the child's training and education; 4. The necessity for the parent to consent to the adoption of the child; 5. The parent's right to the earnings of the child; and 6. The parent's right to inherit from or through the child. *Provided, that nothing herein shall in any way affect the right of the child to inherit from the parent*." (emphasis added)); S.C. Code Ann. § 63-7-2590(A) (2008) ("An order terminating the relationship between parent and child under this article divests the parent and the child of all legal rights, powers, privileges, immunities, duties, and obligations with respect to each other, *except the right of the child to inherit from the parent. A right of inheritance is terminated only by a final order of adoption*." (emphasis added)); Tenn. Code Ann. § 36-1-11(l)(2) (2018) ("Notwithstanding subdivision (l)(1), a child who is the subject of the order for termination *shall be entitled to inherit from a parent whose rights are terminated until the final order of adoption is entered*." (emphasis added)); Tex. Fam. Code Ann. § 161.206(b) (2017) ("Except as provided by Section 161.2061, an order terminating the parent-child relationship divests the parent and the child of all legal rights and duties with respect to each other, *except that the child retains the right to inherit from and through the parent unless the court otherwise provides*." (emphasis added)); Utah Code Ann. § 78A-6-513(1) (2013) ("An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other, *except the right of the child to inherit from the parent*." (emphasis added)); Va. Code Ann. § 64.2-102(5) (2012) ("Unless otherwise specifically provided therein, an order terminating residual parental rights under § 16.1-283 terminates the rights of the parent to take from or through the child in question but *the order does not otherwise affect the rights of the child, the child's kindred, or the parent's kindred to take from or through the parent* or the rights of the parent's kindred to take from or through the child." (emphasis added)).

Furthermore, because Michaelin seeks her share of her biological father's intestate estate in accordance with West Virginia statutory provisions pertaining to descent and distribution, we may not rely solely on the Child Welfare Act. Instead, it is necessary to examine the descent and distribution provisions of the West Virginia Code.

Pursuant to W. Va. Code § 42-1-3a (1992) (Repl. Vol. 2014),

> [a]ny 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;

(Emphasis added).[7] Michael Hall had not remarried following his divorce from Michaelin's

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[7]W. Va. Code § 42-1-3a (1992) (Repl. Vol. 2014) states in full:

> Any part of the intestate estate not passing to the decedent's surviving spouse under section three 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;
>
> (c) If there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;

(continued...)

mother. Therefore, according to W. Va. Code § 42-1-3a, his entire estate passes to his surviving *descendants*. In other words, in order for Michael Hall's intestate estate to pass to Michaelin, she must be his descendant.

The term "descendant" is expressly defined in chapter forty-two of the code: "'Descendant' of an individual means all of his or her descendants of all generations, *with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this code*." W. Va. Code § 42-1-1(5) (1995) (Repl. Vol. 2014) (emphasis added). According to the language used in this statute, the question of whether Michaelin is a descendant of Michael Hall is "determined by the definition of *child and parent* contained in this code." W. Va. Code § 42-1-1(5) (emphasis added).

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[7](...continued)

> (d) If there is no surviving descendant, parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents, half of the estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and the other half passes to the decedent's maternal relatives in the same manner; but, if there is no surviving grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other side in the same manner as the half.

Looking first to the term "child," we observe that it is not defined in chapter forty-two of the West Virginia Code. Oddly, though, W. Va. Code § 42-1-1(5) does not refer to the definition of "child" located in a particular chapter or article of the code. Rather, it refers to "the definition . . . contained in *this code*." W. Va. Code § 42-1-1(5) (emphasis added). Thus, the absence of a definition of "child" within the provisions relating to descent and distribution would seem to indicate that a definition found elsewhere in the code might be applied. Although the term "child" is defined in numerous places throughout the West Virginia Code, none of those definitions appear to be applicable in the context of descent and distribution insofar as they primarily refer to a child who has yet to reach the age of majority or who is subject to some other form of dependency. *See, e.g.*, W. Va. Code § 48-10-202 (2001) (Repl. Vol. 2015) (defining "child" in relation to grandparent visitation as "a person under the age of eighteen years who has not been married or otherwise emancipated"); W. Va. Code § 48-12-101(6) (2007) (Repl. Vol. 2015) (providing that "'[c]hild' means a child to whom a duty of child support is owed" in domestic relations statute for purposes of medical support enforcement); W. Va. Code § 48-16-102(1) (2015) (Repl. Vol. 2015) (defining "child" as "an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent" in West Virginia Uniform Interstate Family Support Act); W. Va. Code § 48-20-102(b) (2001) (Repl. Vol. 2015) (specifying that "'[c]hild' means an individual who has not attained eighteen years of age" for purposes of

Uniform Child Custody Jurisdiction and Enforcement Act); W. Va. Code § 48-31-102(3) (2017) (Supp. 2017) (defining "child" for purposes of Uniform Deployed Parents Custody and Visitation Act as "(A) An unemancipated individual who has not attained eighteen years of age; or (B) An adult son or daughter by birth or adoption, or under law of this state other than this article, who is the subject of a court order concerning custodial responsibility"); W. Va. Code § 49-1-209 (2015) (Repl. Vol. 2015) (stating, in child welfare statute relating to missing children, that "'[c]hild' means an individual under the age of eighteen years who is not emancipated"); W. Va. Code § 49-7-101 (2015) (Repl. Vol. 2015) (stating, in article II, subsection (a) of Interstate Compact on Placement of Children, that "'[c]hild' means a person who, by reason of minority is legally subject to parental, guardianship or similar control"); W. Va. Code § 49-8-2(1) (2016) (Supp. 2017) (establishing definition of "child" for purposes of Supporting and Strengthening Families Act and stating that "'[c]hild' means an individual under eighteen years of age"); W. Va. Code § 61-8D-1(2) (2014) (Repl. Vol. 2014) (setting out that "'[c]hild' means any person under eighteen years of age not otherwise emancipated by law" for purposes of article pertaining to criminal child abuse).

While the absence of a clear definition of the term "child" is troublesome, W. Va. Code § 42-1-1(5) specifies that, for the purpose of identifying descendants, "the relationship of parent and child" is "determined by the definition of child *and* parent contained in this code." (Emphasis added). Use of the conjunctive "and" in this provision

directs that consideration be given to the definition of both "child" and "parent" in determining the relationship of parent and child. *See Ooten v. Faerber*, 181 W. Va. 592, 597, 383 S.E.2d 774, 779 (1989) (observing that "the use of 'and' . . . clearly makes both conditions necessary, not merely either of the two. . . . 'And' is a conjunction connecting words or phrases, expressing the idea that the latter is to be added to or taken along with the first."). Because both definitions must be met, we next consider the term "parent." If a parent whose parental rights have been terminated does not come within the definition of "parent" as set out in the descent and distribution statutes, then this issue may be resolved even in the absence of a clear definition of the term child.

The term "parent," as defined within the descent and distribution statutes, "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." W. Va. Code § 42-1-1(26) (emphasis added). Under the plain language of this provision, then, a "parent" for purposes of intestate succession is one who would be entitled to take if the child died without a will. A parent whose rights have been terminated does not meet this definition. Termination of parental rights terminates *all* rights of the parent. *See* Syl. pt. 4, in part, *In re Cesar L.*, 221 W. Va. 249, 654 S.E.2d 373 ("A final order terminating a person's parental rights . . . completely severs the parent-child relationship,

and, as a consequence of such order of termination, the law no longer recognizes such person as a 'parent' with regard to the child(ren) involved in the particular termination proceeding."). *See also* W. Va. Code § 49-4-604(6) (formerly W. Va. Code § 49-6-5(a)(6)) (authorizing circuit court to terminate "parental, custodial and guardianship rights and responsibilities" of an abusing parent upon making required findings); *Elmer Jimmy S. v. Kenneth B.*, 199 W. Va. 263, 268, 483 S.E.2d 846, 851 (1997) ("When an individual's parental rights have been terminated the law no longer recognizes such individual as a 'parent' with regard to the child or children involved in the particular termination proceeding."). Because, the relationship of a terminated parent with his or her child is utterly severed by virtue of W. Va. Code § 49-4-604(b)(6), a parent whose parental rights have been terminated would not be entitled to take from the subject child and, therefore, does not meet the definition of "parent" set out in W. Va. Code § 42-1-1(26).[8] As one court has aptly

[8]The laws allowing for termination of parental rights have existed in West Virginia since at least 1941. *See* W. Va. Code § 49-6-5(3) (1941) (Code of 1943) (allowing a court to "terminate the parental rights and responsibilities of the parent or parents" when termination is "necessary for the welfare of a child"). Therefore, we may presume that the Legislature knew of this provision in 1992 when it revised the laws pertaining to intestate succession and included the above-quoted definition of the term "parent." *See* Syl. pt. 5, *Dale v. Painter*, 234 W. Va. 343, 765 S.E.2d 232 (2014) ("A statute should be so read and applied as to make it accord with the spirit, purposes and objects of the general system of law of which it is intended to form a part; it being presumed that the legislators who drafted and passed it were familiar with all existing law, applicable to the subject matter, whether constitutional, statutory or common, and intended the statute to harmonize completely with the same and aid in the effectuation of the general purpose and design thereof, if its terms are consistent therewith." (quotations and citation omitted)); Syl. pt. 12, *Vest v. Cobb*, 138 W. Va. 660, 76 S.E.2d 885 (1953) ("The Legislature, when it enacts legislation, is presumed (continued...)

observed, "[e]quity, morality, and common sense dictate that physically or sexually abusive parents have no right of inheritance by intestacy." *New Jersey Div. of Youth & Family Servs. v. M.W.*, 398 N.J. Super. 266, 295, 942 A.2d 1, 18 (App. Div. 2007).

Insofar as the identity of "descendants" who may take an intestate share of an estate is dependant upon the existence of a relationship that includes both a "parent" and a "child," and a terminated parent fails to meet the definition of "parent" with respect to the subject child, the child is not a "descendant" of that biological parent. *See* W. Va. Code § 42-1-1(5) ("'Descendant' of an individual means all of his or her descendants of all generations, *with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this code*." (emphasis added)). Accordingly, we now expressly hold that a child may not inherit under W. Va. Code § 42-1-3a(a) from a biological parent who dies intestate after his or her parental rights to said child have been either voluntarily relinquished or involuntarily terminated.

Applying the foregoing holding to the instant matter, we must affirm the circuit court's correct determination that Michaelin may not inherit from her father's intestate estate. While we are sympathetic to Michaelin's circumstances, the decisions of this Court must be

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[8](...continued)
to know of its prior enactments.").

guided by the law and not our sympathies. We firmly believe our holding is the best representation of Legislative intent based upon the relevant statutes. Any change in this law must be enacted by the Legislature, as that is the proper body to address policy considerations and resolve the myriad of questions associated with such a change in the law.[9] *See, e.g.*, Richard L. Brown, *Disinheriting the "Legal Orphan": Inheritance Rights of Children After Termination of Parental Rights*, 70 Mo. L. Rev. 125, 138-39 (Winter 2005) (observing that broadly worded statutes likely "have the effect of extinguishing the right of the child to inherit from a terminated parent" and "[t]he only remedy in such states may be amendment of the statute to provide explicitly . . . that the child's inheritance rights survive termination." (footnote omitted)). Such considerations simply are not proper undertakings for courts. "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 . . . ." *State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 145, 107 S.E.2d 353, 358 (1959). *See also* Syl. pt. 3, in part, *West Virginia Health Care Cost Review Auth. v. Boone Mem'l Hosp.*, 196 W. Va. 326, 472 S.E.2d 411 (1996) ("If the language of an enactment is clear and within the constitutional authority of the law-making body which passed it, courts must read the relevant law according to its

[9]One such question that comes to mind is the identity of the party who would be responsible for protecting an infant's right to such an inheritance, especially if the child is not placed in the care of a non-offending parent and has not been legally adopted prior to reaching the age of majority.

unvarnished meaning, without any judicial embroidery."). In other words,

> [t]his Court does not sit as a superlegislature, commissioned to pass upon the political, social, economic or scientific merits of statutes pertaining to proper subjects of legislation. It is the duty of the Legislature to consider facts, establish policy, and embody that policy in legislation. It is the duty of this Court to enforce legislation unless it runs afoul of the State or Federal *Constitutions*.

Syl. pt. 2, *Huffman v. Goals Coal Co.*, 223 W. Va. 724, 679 S.E.2d 323 (2009).

IV.

CONCLUSION

For the reasons explained herein, we affirm the April 13, 2017, order of the Circuit Court of Mercer County granting summary judgment to the defendants.

Affirmed.