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## Descent and Distribution - Clarification of Illegitimate's Right to Inherit from Intestate Father - *Larsen v. Kimble*

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DESCENT AND DISTRIBUTION — Clarification of Illegitimate's  
Right to Inherit from Intestate Father — *Larsen v. Kimble*,  
447 So. 2d 1278 (Miss. 1984), *reh'g denied* (1984).

FACTS OF THE CASE

In October 1981, Darlene Larsen filed petitions in the Chancery Court of Covich County, seeking to share in the estate of Earl B. Kimble as his alleged granddaughter.<sup>1</sup> Larsen claimed that her mother, Earl Irene Stuart Kimble, was the illegitimate daughter of Earl B. Kimble and Edith Stuart, who had never married each other. Earl B. Kimble died on May 21, 1981; after his estate was probated,<sup>2</sup> it was distributed entirely to his widow, Mable Kimble. Since Earl Irene Stuart Kimble had died on September 9, 1976, Mable Kimble and Kimble's alleged granddaughter, Darlene Larsen, were his sole survivors.<sup>3</sup>

Larsen first sought to prove the paternity of her mother and then to assert a claim to Kimble's estate through her mother. Prior to an evidentiary hearing, the chancery court consolidated and dismissed Larsen's petitions with prejudice.<sup>4</sup>

The Mississippi Supreme Court, in a six-to-two decision, reversed the lower court and remanded for a full hearing on the merits of Larsen's claim to Kimble's estate.<sup>5</sup> The court held that Larsen could properly sue to determine her heirship descending from the father of her illegitimate mother,<sup>6</sup> and that her claim, brought within the statutory period, was timely filed.<sup>7</sup>

BACKGROUND AND HISTORY

At common law the illegitimate child—one born before marriage or so long after the dissolution of marriage that the husband could not have been the father<sup>8</sup>—was deemed to be *nullius filius*, the child of no one.<sup>9</sup> As such, the illegitimate child could not inherit.<sup>10</sup> Indeed, as far as the common law was concerned,

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1. *Larsen v. Kimble*, 447 So. 2d 1278 (Miss. 1984), *reh'g denied* (1984). Larsen's first petition sought to determine the heirs of Earl B. Kimble; the second was a petition to reopen his estate. *Id.*

2. The estate was opened in the Chancery Court of Covich County on June 24, 1980, and closed on October 6, 1980. *Id.*

3. *Id.*

4. *Id.*

5. *Id.* at 1283.

6. *Id.* at 1282; MISS. CODE ANN. § 91-1-15(3) (Supp. 1985).

7. 447 So. 2d at 1283; MISS. CODE ANN. § 91-1-15(3)(D)(ii) (Supp. 1985).

8. 1 W. BLACKSTONE, COMMENTARIES \*459. The early English law did not, however, classify as illegitimate a child conceived before, but born after, the marriage of his or her natural parents. This exception was allowed as an "incident that can happen but once, since all future children will be begotten, as well as born, within the rules of honor and civil society." *Id.* at \*456.

9. H. KRAUSE, ILLEGITIMACY: LAW AND SOCIAL POLICY 3 (1971).

10. 1 W. BLACKSTONE, *supra* note 8, at \*459.

this difference in inheritance rights was the chief distinction between legitimate and illegitimate children.<sup>11</sup>

The harshness of this common law approach has been mitigated by statutes in all jurisdictions which put illegitimate children on substantially equal terms with their legitimate siblings concerning inheritance from the mother.<sup>12</sup> Since 1848, Mississippi has allowed illegitimate children full inheritance rights from the mother and her kindred,<sup>13</sup> and by 1906, children of illegitimates could, to a limited extent,<sup>14</sup> inherit from their grandparents and the brothers and sisters of their mother or father.<sup>15</sup>

Until very recently, however, illegitimate children rarely were entitled to inherit from the father. This distinction between maternal and paternal inheritance rights stemmed partly from the difficulties of proving paternity.<sup>16</sup> The majority of state intestacy statutes, therefore, focused on those things which the parents could do to render the child legitimate for the purpose of paternal inheritance.<sup>17</sup> Under the Mississippi law in effect until 1981, it was necessary for the father to have acknowledged the child as his

11. H. KRAUSE, *supra* note 9, at 5. Blackstone detailed the discrimination suffered by the illegitimate: "The incapacity of a bastard consists principally in this, that he cannot be heir to any one, neither can he have heirs, but of his own body; for, being *nullius filius*, he is therefore of kin to nobody, and has no ancestor from whom any inheritable blood can be derived." 1 W. BLACKSTONE, *supra* note 8, at \*459.

12. T. ATKINSON, *HANDBOOK OF THE LAW OF WILLS* 82 (2d ed. 1953). This allowance was made because of the state's recognition that maternity is normally beyond doubt. H. KRAUSE, *supra* note 9, at 25.

13. HUTCHISON'S CODE OF 1848, ch. 35, art. 2(4), which provided that "[h]ereafter all illegitimate children shall inherit the property of their mothers, and from each other as the children of the half-blood, according to the statutes of descent and distribution now in force in this state."

Although at first this statute was strictly construed so as to bar reciprocal inheritance by the mother from her illegitimate child, *see, e.g.*, Alabama and Vicksburg Railway Co. v. Williams, 78 Miss. 209, 28 So. 853 (1900), provision has since been made for this. *See, e.g.*, HEMINGWAY'S CODE OF 1917 § 1454 (Supp. 1924), which provided that "[t]he mother of an illegitimate, her other children, and her kindred, whether they be legitimate or illegitimate, shall inherit from an illegitimate according to the statutes of descent and distribution."

As an example of illegitimate children inheriting from the mother's kindred, see *McDaniel v. McDaniel*, 123 Miss. 401, 85 So. 113 (1920), where illegitimate children were allowed to inherit their deceased mother's share of her intestate brother's estate.

14. "But the children of illegitimates shall not inherit from any ancestor or collateral kindred if there be legitimate heirs of such ancestor or collateral kindred, in the same degree, to whom the estate would otherwise descend." MISS. CODE OF 1906, ch. 35, § 1655.

15. *Id.*

16. T. ATKINSON, *supra* note 12, at 85. *See generally*, Comment, *The Inheritance Rights of Illegitimate Children in Georgia: The Role of a Judicial Determination of Paternity*, 16 GA. L. REV. 170 (1981).

However, as Krause pointed out in 1971, any possible uncertainty that may exist in paternity cases on the average does not support the states' completely barring illegitimates from offering proof as to paternity. H. KRAUSE, *supra* note 9, at 82. Nevertheless, such remained the prevalent statutory treatment in most states up until the Supreme Court's opinion in *Trimble v. Gordon*, 430 U.S. 762 (1976). *See infra* notes 25-38 and accompanying text.

17. H. KRAUSE, *supra* note 9, at 44-45.

and to have lawfully married the mother in order for his illegitimate child to inherit.<sup>18</sup>

Although the Mississippi Supreme Court adhered strictly to these stringent requirements for paternal inheritance rights up through the 1970's,<sup>19</sup> similar statutes denying to illegitimates the same rights granted to legitimate children came under the scrutiny of the United States Supreme Court. The first case in which the Supreme Court considered the constitutionality under the equal protection clause<sup>20</sup> of such restrictive intestate succession laws was *Labine v. Vincent*.<sup>21</sup>

In *Labine*, the Court rejected a challenge to a Louisiana statute which allowed illegitimates to inherit from their father only when the estate would otherwise escheat to the state.<sup>22</sup> Despite this harsh distinction between the rights of legitimate and illegitimate children, the Court declined to find a violation of the equal protection clause. The Court based its holding on the absence of any statutorily-imposed "insurmountable barrier" to inheritance, since the father could have provided for the child by executing a will, marrying the mother or formally legitimating the child.<sup>23</sup>

The "minimal scrutiny"<sup>24</sup> applied by the Court to the statute challenged in *Labine* was abandoned in the 1977 case of *Trimble v. Gordon*.<sup>25</sup> In *Trimble*, the Court examined an Illinois intestacy

18. MISS. CODE ANN. § 91-1-15 (1972) (amended 1981 & 1983). Specifically, for the child to "be legitimate and capable in law to inherit and transmit inheritance as if born in wedlock," three things must have been shown: 1) that the child was the man's natural daughter; 2) that the man later married the mother; and 3) that the man acknowledged the child as his. *Thomas v. Thomas*, 200 Miss. 96, 101-02, 25 So. 2d 710, 710 (1946).

Although the court held that the requisite acknowledgment had to be shown by clear, convincing and unambiguous evidence, acts of recognition or spoken acknowledgment could meet this standard, and actual support by the father of the child was not required to be shown. *Hulitt v. Jones*, 220 Miss. 827, 832, 72 So. 2d 204, 206 (1954).

19. See, e.g., *Atkers v. Estate of Johnson*, 236 So. 2d 437 (Miss. 1970), in which the court affirmed a chancery court's decision which disallowed the claim of illegitimate children against their alleged paternal grandfather, holding that MISS. CODE ANN. § 474 (Supp. 1956) restricted illegitimates to inheritance from the maternal side. "No provision is made for inheritance from the father, the reasons for which we believe to be obvious." *Id.* at 440.

And, even though the court applied the Supreme Court's decision in *Gomez v. Perez*, 409 U.S. 535 (1973) to strike out a provision of MISS. CODE ANN. § 93-9-29(2) (1972) which discriminated against illegitimates in the scope of paternal support, it carefully noted that the "decision in the present case does not weaken the authority of this State to provide for exclusion of illegitimates from inheriting property from intestate natural fathers." *Rias v. Henderson*, 342 So. 2d 737, 741 (Miss. 1977).

20. The equal protection clause of the fourteenth amendment provides that "[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U. S. CONST. amend. XIV, § 1.

21. 401 U.S. 531 (1971).

22. "Natural children are called to the inheritance of their natural father, who has duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the State." LA. CIV. CODE ANN. art. 919 (West 1952) (held unconstitutional in *Succession of Brown*, 379 So. 2d 1172 (La. Ct. App.), *aff'd*, 388 So. 2d 1151 (La. 1980) (amended 1981)).

23. 401 U.S. at 539.

24. In *Labine*, the Court deferred to the state interest in promoting the "legal family" relationship. Seeburg, *The Muddle of the Middle Tier: The Coming Crisis in Equal Protection*, 48 MO. L. REV. 587, 599 (1983).

25. 430 U.S. 761 (1977).

succession statute<sup>26</sup> “more critically.”<sup>27</sup> The Court rejected the “insurmountable barrier” approach of *Labine*<sup>28</sup> because its focus on hypothetical courses of action the intestate father “might have taken to assure some inheritance for his illegitimate children”<sup>29</sup> lost sight of the essential question presented: “the constitutionality of discrimination against illegitimates in a state succession law.”<sup>30</sup> Furthermore, this decision of constitutionality depended “upon the character of the discrimination and its relation to legitimate legislative aims.”<sup>31</sup>

In *Trimble*, the Court recognized that the state had substantial interests in establishing accurate methods of property disposition and in avoiding the spurious claims which might accompany the difficulty of proof in paternity cases.<sup>32</sup> However, the Court found that the Illinois statute was unconstitutional for failing to provide any “middle ground between the extremes of complete exclusion and case-by-case determination of paternity.”<sup>33</sup> While recognizing that difficulties in proving paternity might justify a more demanding standard for illegitimates claiming from their fathers than either that required for illegitimates claiming from their mothers, or that for legitimate children generally,<sup>34</sup> the Court held that such a standard could not exclude even those forms of proof which do not compromise the state’s interests.<sup>35</sup> Thus, the Illinois

26. ILL. ANN. STAT. ch. 110 1/2, § 2-2 (Smith-Hurd 1978), which provided in part that [a]n illegitimate child is heir of his mother and of any maternal ancestor and of any person from whom his mother might have inherited, if living; and the lawful issue of an illegitimate person shall represent such person and take by descent any estate which the parent would have taken, if living. A child who was illegitimate whose parents intermarry and who is acknowledged by the father as the father’s child is legitimate.

27. “[I]t is apparent that we have examined the Illinois statute more critically than the Court examined the Louisiana statute in *Labine*. To the extent that our analysis in this case differs from that in *Labine*, the more recent analysis controls.” 430 U.S. at 776 n.17.

28. The Court recognized its departure in reasoning from *Labine* without overruling it. “*Labine v. Vincent*, *supra*, is difficult to place in the pattern of this Court’s equal protection decisions, and subsequent cases have limited its force as a precedent.” *Id.* at 767 n. 12. The Court added that, though some amount of judicial discretion is required when the challenged statute deals with substantial state interests, “there is a point beyond which such deference cannot justify discrimination.” *Id.*

29. *Id.* at 774.

30. *Id.*

31. *Id.* at 769 (quoting *Matthew v. Lucas*, 427 U.S. 495, 504 (1976)).

32. *Id.* at 770. The Court did, however, expressly refuse to recognize a state interest in influencing the “actions of men and women by imposing sanctions on the children born of their illegitimate relationships.” *Id.* at 769. Because illegitimate children can affect neither their parents’ conduct nor their own status, laws penalizing the child are unjust and ineffective ways of deterring the parents from illicit relationships. *Id.* at 770.

However, the Court has held that the parents who are themselves responsible for their unmarried status may be subject to legal disabilities distinct from those of married parents. Seeburger, *supra* note 24, at 602. See, e.g., *Parham v. Hughes*, 441 U.S. 347 (1979) (upholding a Georgia statute which prohibited a father who had not legitimated his son from suing for the child’s wrongful death); *Califano v. Boles*, 443 U.S. 282 (1979) (upholding the denial of “mother’s benefits” under the Social Security Act to mothers who never married nor were dependent on the wage-earner (the illegitimate child’s father)).

33. 430 U.S. at 770-71.

34. *Id.* at 770.

35. *Id.* at 772 n.14. The Court stated that evidence of a prior adjudication or formal acknowledgment of paternity “clearly” does not compromise the state’s interest in efficient and accurate property disposition. *Id.*

statute, which required both the parents' marriage and acknowledgment by the father, extended "well beyond the asserted purposes"<sup>36</sup> of the distinction between legitimate and illegitimate children, and so violated equal protection.<sup>37</sup>

The Court further refined its "traditional" equal protection analysis<sup>38</sup> in *Lalli v. Lalli*,<sup>39</sup> in which an illegitimate child challenged a New York statute requiring an adjudication of paternity during the father's lifetime for paternal inheritance.<sup>40</sup> Faced with the same issue as in *Trimble*, that of whether the remaining statutory obstacles to inheritance by illegitimate children could be squared with the equal protection clause,<sup>41</sup> the Court answered affirmatively, finding the New York statutory requirement "substantially related" to the important state interest in efficient distribution of property after death.<sup>42</sup> An adjudication of paternity during the father's lifetime, because it was "designed to ensure the accurate resolution of claims of paternity" while minimizing "the potential for disruption of estate administration,"<sup>43</sup> was a valid state procedure in the intestacy scheme. Distinguishing the statute in *Trimble*, which imposed two requirements as absolute preconditions to inheritance,<sup>44</sup> from the single "evidentiary" requirement<sup>45</sup> of the New York statute, the Court found that the New York law did not reach "far in excess of its justifiable goals" so as to disqualify an "unnecessarily large number of children born out of wedlock,"<sup>46</sup> as did the flawed Illinois statute in *Trimble*.<sup>47</sup>

Until 1981, Mississippi's statute on intestate succession remained similar to the one declared unconstitutional in *Trimble*, in that inheritance was allowed only if the father acknowledged the child

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36. *Id.* at 773.

37. *Id.* at 776.

38. Under this analysis, the Court "asks whether this statutory differentiation on the basis of illegitimacy is justified by the promotion of recognized state objectives." *Trimble*, 430 U.S. at 773-74.

39. 439 U.S. 259 (1978).

40. N.Y. EST. POWERS & TRUSTS LAW § 4-1.2 (McKinney 1981), which provided in part that [a] child born out of wedlock is the legitimate child of his father so that he and his issue inherit from his father and his paternal kindred if . . . a court of competent jurisdiction has, during the lifetime of the father, made an order of filiation declaring paternity . . . .

The Court limited its approval of the statute only by the requirement that the judicial adjudication of paternity be issued during the lifetime of the father, since the New York court had not ruled on the constitutionality of the two-year limitation within which the claim was to be filed. 439 U.S. at 267 n. 5.

41. 439 U.S. at 266.

42. *Id.* at 275-75.

43. *Id.* at 271. Accuracy was "enhanced by placing the paternity disputes in a judicial forum during the lifetime of the father," when he would be available to contribute to the fact-finding process and defend himself from "unjust accusations." *Id.*

44. *Id.* at 266. The combination of requiring the father's acknowledgment of paternity and the intermarriage of the parents had been found to eliminate the "middle ground" deemed necessary by the Court. *Id.*

45. *Id.* at 267.

46. *Id.* at 273.

47. *Id.*

and married the mother.<sup>48</sup> Although the Mississippi Supreme Court never declared the statute unconstitutional,<sup>49</sup> the legislature amended it in 1981<sup>50</sup> to greatly increase the inheritance rights of illegitimate children.<sup>51</sup> The amended version listed a number of events which would enable the child to inherit from the father: marriage by the natural parents before the birth of the child; an adjudication of paternity or legitimacy during the father's lifetime; or an adjudication of paternity after the father's death, based upon clear and convincing evidence, and brought within one year after the father's death or ninety days after the first published notice to creditors, whichever is less.<sup>52</sup> In addition, a specific provision addressed claims which exist prior to the amendment's enactment. Such claims concerning the estate of an intestate who died before July 1, 1981, could be brought within three years from July 1, 1981.<sup>53</sup>

In 1983, the legislature again amended § 91-1-15 of the Mississippi Code to include the definitions of "remedy," "claim," "illegitimate," and "natural parents" as used in the statute.<sup>54</sup> This amendment was necessary, the legislature stated, to clarify the legislative intent in creating "a new, separate and distinct remedy for the claims of all illegitimates without classification," such remedy to be bestowed retrospectively and prospectively, within the established limitations.<sup>55</sup>

The legislature apparently passed the 1983 amendment to § 91-1-15 in response to judicial conflict regarding the proper sta-

48. MISS. CODE ANN. § 91-1-15 (1972) (amended 1981 & 1983) provided that "[i]f any man beget a child or children by a woman whom he shall afterward marry, such child or children, if acknowledged by the man, shall, in virtue of such marriage and acknowledgment, be legitimate and capable in law to inherit and transmit inheritance as if born in wedlock." See also *supra* notes 18-19 and accompanying text.

49. The court declined in several cases to consider the statute's constitutionality. In *Knight v. Moore*, 396 So. 2d 31 (Miss. 1981), cert. denied 454 U.S. 817 (1981), decided three months before the amended version of § 91-1-15 went into effect, the court dismissed an illegitimate daughter's heirship proceedings as barred by the six-year statute of limitations contained in Miss. CODE ANN. § 15-1-49 (1972). The court therefore did not address the daughter's argument that § 91-1-15 was unconstitutional in light of *Trimble*. *Id.* at 33.

In *Estate of Miller v. Miller*, 409 So. 2d 715 (Miss. 1982) the court reversed and remanded an heirship suit filed in 1980 in which the chancellor had declared the unamended version of § 91-1-15 unconstitutional; the Mississippi Supreme Court held that the issue of constitutionality had not been properly brought before the court. *Id.* at 718.

50. Act of April 23, 1981, ch. 529, § 1, 1981 Miss. Laws 1615.

51. See generally, 1981 Miss. S. Ct. Rev. Misc., 52 Miss. L.J. 481 (June 1982).

52. MISS. CODE ANN. § 91-1-15(3) (1972) (amended 1981 & 1983). The amended version also placed certain qualifications on the effect of judicial determinations of paternity made outside Mississippi.

53. MISS. CODE ANN. § 91-1-15(d)(ii) (Supp. 1985) (amended 1981 & 1983) provided that [a] remedy is hereby created in favor of all illegitimates having any claim existing prior to July 1, 1981, concerning the estate of an intestate whose death occurred prior to such date by or on behalf of an illegitimate or an alleged illegitimate child to inherit from or through its natural father and any claim by a natural father to inherit from or through an illegitimate child shall be brought within three (3) years from and after July 1, 1981, and such period shall run notwithstanding the minority of a child.

54. MISS. CODE ANN. § 91-1-15(1)(a)-(d) (Supp. 1985).

55. Act of March 14, 1983, ch. 339, 1983 Miss. Laws 92.

tute of limitations to apply to the new remedy. The problem stemmed from the decision of *Knight v. Moore*,<sup>56</sup> which was decided three months before the amended version of § 91-1-15 went into effect. In *Knight*, the court dismissed an illegitimate daughter's heirship proceedings as barred by the six-year statute of limitations contained in § 15-1-49 of the Mississippi Code.<sup>57</sup>

In the 1983 case of *Estate of Kidd v. Kidd*,<sup>58</sup> the court interpreted the amended version of § 91-1-15 to create a new cause of action, which accrued on the date the act went into effect (July 1, 1981).<sup>59</sup> However, the language in *Kidd* implied that the statute of limitations would be for a period of six years, to run from July 1, 1981.<sup>60</sup>

Confusion also was engendered by the court's holding in *Witt v. Mitchell*.<sup>61</sup> In *Witt*, the court refused to apply the *Trimble* decision retroactively,<sup>62</sup> and implied that the three-year savings clause of amended § 91-1-15 applied only to cases accruing after or pending on April 26, 1977, the date of the *Trimble* decision.<sup>63</sup>

#### INSTANT CASE

The majority in *Larsen v. Kimble* reversed the lower court based on a pair of legal holdings. First, the court held that Darlene Larsen had a cause of action under the amended version of § 91-1-15<sup>64</sup> to assert a claim against her alleged grandfather's estate.<sup>65</sup> Second, her claim was timely filed, since the three-year statute of limitations applied to the facts of her case.<sup>66</sup>

In deciding that Larsen was entitled to assert the claim, the majority first found that Larsen's mother, Earl Irene Stuart Kimble, had had no right to assert a claim against Earl Kimble. Because he was alive during the whole of Earl Irene Stuart Kimble's lifetime,<sup>67</sup> she never had an action to be declared his heir, since

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56. 396 So. 2d 31 (Miss. 1981), cert. denied, 454 U.S. 817 (1981).

57. *Id.* at 33.

58. 435 So. 2d 632 (Miss. 1983).

59. *Id.* at 635.

60. *Id.*

61. 437 So. 2d 63 (Miss. 1983).

62. *Id.*

63. Comment, *Paternal Inheritance Rights of Illegitimates Under Mississippi Law: Greater Than Equal Protection?* 53 MISS. L.J. 303 (June 1983).

64. MISS. CODE ANN. § 91-1-15(4) (Supp. 1985) provides that "[t]he children of illegitimates and their descendants shall inherit from and through their mother and father according to the statutes of descent and distribution."

65. 447 So. 2d 1278, 1282 (Miss. 1984), *reh'g denied* (1984).

66. *Id.* at 1283.

67. Earl Irene Stuart Kimble died on September 9, 1976, more than three years before Earl Kimble's death on May 29, 1980. *Id.* at 1278.

such a claim accrues only upon an intestate's death.<sup>68</sup> Furthermore, the majority reasoned, since the remedy<sup>69</sup> created by § 91-1-15 first came into existence on July 1, 1981,<sup>70</sup> it was on that date that Darlene Larsen's claim against her putative grandfather<sup>71</sup> first accrued.<sup>72</sup> Therefore, the court concluded that Darlene Larsen did have a right to assert a claim against Earl Kimble's estate.<sup>73</sup>

In holding that the claim was timely filed, the majority first noted that the amended statute contained two separate periods of limitation governing claims against the intestate's estate.<sup>74</sup> The court interpreted the three-year period of limitations<sup>75</sup> to relate "solely to those claims accruing to an illegitimate as a result of the death of an intestate prior to July 1, 1981."<sup>76</sup> As a result, the one-year or ninety-day period<sup>77</sup> applies only to cases where the intestate dies after July 1, 1981.<sup>78</sup> Since Earl Kimble's death occurred before July 1, 1981, Darlene Larsen had until June 30, 1984, to file her claim.<sup>79</sup> Because she filed her petitions in October of 1981, she was well within the period of limitations,<sup>80</sup> and the court remanded her cause to the chancery court for consideration on the merits of her heirship petition.<sup>81</sup>

#### ANALYSIS

The Mississippi Legislature's amendments to § 91-1-15 greatly increased the inheritance rights of illegitimate children. Not only were the dual requirements of marriage and paternal ac-

68. The court stated that

*[i]t is undoubted law that a child, during the lifetime of the father, has no interest in his estate . . . . [N]either wife nor child has any interest in the property of the husband and father during his lifetime; dying intestate they would be his heirs, and to prove their relationship to him is to prove their title to his property by descent [sic] when cast; but it is not to prove a claim that originated in his lifetime. At the death of a person, dying intestate, eo instanti the title of the heirs accrues. 447 So. 2d at 1282 (quoting Estate of Kidd v. Kidd, 435 So. 2d 632, 635 (Miss. 1983) (quoting Covington v. Frank, 77 Miss. 606, 618, 27 So. 1000, 1000 (1900))).*

69. The remedy is defined in § 91-1-15(1)(a) (Supp. 1985) as the right of an illegitimate to commence and maintain a judicial proceeding to enforce a claim to inherit property from the estate of the natural mother or father of such illegitimate, said claim having been heretofore prohibited by law, or prohibited by statutes requiring marriage between the natural parents, or restrained, or enjoined by the order or process of any court in this state.

70. 447 So. 2d at 1282.

71. Miss. CODE ANN. § 91-1-15(3)(d)(ii) (Supp. 1985).

72. "A cause of action accrues only when it comes into existence as an enforceable claim; that is, when the right to sue becomes vested." 447 So. 2d at 1282 (quoting Estate of Kidd v. Kidd, 435 So. 2d 632, 635 (Miss. 1983)).

73. 447 So. 2d at 1282.

74. *Id.* at 1282-83.

75. Miss. CODE ANN. § 91-1-15(3)(d)(ii) (Supp. 1985).

76. 447 So. 2d at 1283.

77. Miss. CODE ANN. § 91-1-15(3)(c) (Supp. 1985).

78. 447 So. 2d at 1283.

79. *Id.*

80. *Id.*

81. *Id.*

knowledge dropped as prerequisites for the child's inheriting from his or her father,<sup>82</sup> but also a retrospective three-year "grace period" was enacted to give all illegitimates and their descendants a right to claim against the father's estate.<sup>83</sup> The decision in *Larsen v. Kimble* is significant in the majority's approval, interpretation, and application of this controversial<sup>84</sup> three-year "savings" provision.

The court recognized that the amended statute was broader in scope than the minimum equal protection guarantees enunciated by the Supreme Court in *Lalli*.<sup>85</sup> However, as the court noted, allowing the illegitimate child an opportunity to seek an adjudication of paternity after the putative father's death does not unduly jeopardize the state's interests in avoiding stale or fraudulent claims<sup>86</sup> and in maintaining a fair and just disposal of the intestate's property.<sup>87</sup> By raising the level of proof necessary to sustain a claim from a preponderance of the evidence<sup>88</sup> to a standard of clear and convincing evidence,<sup>89</sup> while at the same time shortening the periods of limitation in which to file a claim,<sup>90</sup> the legislature adequately safeguarded the state's interests and afforded illegitimate children equal protection under the law.<sup>91</sup>

The legislature's far-reaching provisions, and the court's application of those provisions in *Larsen*, are especially commendable in light of the United States Supreme Court's uncertain guidance<sup>92</sup> in this area of equal protection and the illegitimate child. Although the Court's approval of the statute requiring an adjudication during the father's lifetime evidences its refusal to hold states to one rigid solution that the majority might think the "fairest,"<sup>93</sup> a statute such as § 91-1-15, which goes beyond the minimum protection espoused in *Trimble*,<sup>94</sup> follows the better course by allowing

82. MISS. CODE ANN. § 91-1-15 (Supp. 1985).

83. MISS. CODE ANN. § 91-1-15(4)(d)(ii) (Supp. 1985).

84. See, e.g., Comment, *Paternal Inheritance Rights of Illegitimates Under Mississippi Law: Greater than Equal Protection?* 53 Miss. L.J. 303 (June 1983), in which the author argues against the validity of the three-year savings clause, citing its threat to stability of land and property titles. *Id.* at 314-18.

85. "It should be noted that our statute is much greater in scope than that approved by the Supreme Court in *Lalli*. Our statute permits an adjudication of paternity after the intestate's death whereas the New York statute did not." *Larsen*, 447 So. 2d at 1279 n.1.

86. "Because of the particular problems of proof [in paternity cases], spurious claims may be difficult to expose." *Lalli v. Lalli*, 439 U.S. 259, 271 (1978).

87. 447 So. 2d at 1283.

88. This is the burden of proof required in actions to establish paternity during the father's lifetime. *Ivy v. State Dept. of Public Welfare*, 449 So. 2d 779, 782 (Miss. 1984).

89. See C. McCORMICK, *THE LAW OF EVIDENCE* § 340 (3d ed. 1984).

90. The statute shortens this period to either one year or ninety days after the intestate's death. MISS. CODE ANN. § 91-1-15(3)(c) (Supp. 1985).

91. 447 So. 2d at 1283.

92. Note, *Protecting the Illegitimate's Right to Inherit*, 6 OKLA. CITY U.L. REV. 469, 472-73 (1981).

93. *Lalli*, 439 U.S. at 273; see also Seeburger, *supra* note 24, at 601.

94. This minimum protection would be provided by a middle ground between "complete exclusion and case-by-case determination of paternity." *Trimble*, 430 U.S. at 771.

all illegitimates an opportunity to assert a claim to their fathers' estates. The amendments to § 91-1-15 did create a new remedy to benefit all illegitimates without classification:<sup>95</sup> those who desire to claim against the estate of an intestate who died before July 1, 1981, have three years in which to file a claim;<sup>96</sup> and in all other cases the person asserting the claim has one year or ninety days after the intestate's death to pursue the claim.<sup>97</sup>

Because of the paucity of cases that have reached the Mississippi Supreme Court on the issue, it is difficult to ascertain whether many illegitimate children or their descendants have taken advantage of the three-year grace period to assert claims to estates of intestates dying before July 1, 1981, as did Darlene Larsen. Certainly, there is no evidence of a great deluge of spurious claims and resulting upheaval of estates and titles to real property spawned by this three-year period, as predicted by some critics of the provision.<sup>98</sup> If Darlene Larsen is successful in establishing her heirship in Earl Kimble's estate, it will, of course, be necessary to reopen his estate, which has been closed since October 1980.<sup>99</sup> However, any short-term uncertainty as to the status of property<sup>100</sup> should not, and under the Mississippi provision does not, outweigh the state's interest in protecting the inheritance rights of illegitimate children, who, after all, are in no way responsible for their status.<sup>101</sup> And if, in a particular case, a father did not want his illegitimate child to inherit anything from him, nothing in § 91-1-15 would prevent him from disinheriting his illegitimate child in his will, as he could his legitimate child.<sup>102</sup>

In *Larsen*, the majority also settled the confusion as to the appropriate period of limitations to be applied under the amended version of § 91-1-15.<sup>103</sup> In *Larsen*, the court interpreted the provisions of the 1981 amendment to set a one-year period of limitations beginning at the death of the intestate.<sup>104</sup>

Also, the court stated unequivocally that the three-year period should apply to all cases in which the intestate died prior to July 1, 1981.<sup>105</sup> The *Larsen* decision, in which the cause of action is

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95. Act of March 14, 1983, ch. 339, 1983 Miss. Laws 92.

96. Miss. CODE ANN. § 91-1-15(3)(d)(ii) (Supp. 1985).

97. Miss. CODE ANN. § 91-1-15(3)(c) (Supp. 1985).

98. Comment, *Paternal Inheritance Rights*, *supra* note 63, at 314-15.

99. 447 So. 2d at 1278.

100. *Id.* at 1281, *noted in* Act of March 14, 1983, ch. 339, 1983 Miss. Laws 92.

101. "[I]t is unjust and ineffective for society to express its condemnation of procreation outside the marital relationship by punishing the illegitimate child who is in no way responsible for his situation and is unable to change it." *Parham v. Hughes*, 441 U.S. 347, 352 (1978).

102. H. KRAUSE, *supra* note 9, at 93.

103. *See supra* notes 56-63 and accompanying text.

104. *Larsen*, 447 So. 2d at 1283.

105. *Id.*

held to accrue only as of July 1, 1981, has been followed in subsequent cases.<sup>106</sup>

### CONCLUSION

Even though the three-year "grace period" for filing claims against estates of intestates who died before July 1, 1981 expired on June 30, 1984, the court's interpretation that all claims concerning such estates are covered by the three-year provision will likely affect many cases pending in lower state courts. Moreover, the court's delineation of the two periods of limitation contained in § 91-1-15<sup>107</sup> was essential to the future application of the statute. Also, for the first time since the enactment of the 1981 and 1983 amendments to § 91-1-15, the court took the opportunity to analyze the statute as a whole, interpreting the provisions with regard to the legislative intent to afford illegitimate children equal protection while safeguarding important state interests in land disposition and administration.

In only a few years, the rights of illegitimates in Mississippi to claim a share in their intestate fathers' estates have dramatically increased. Prior to the 1981 amendment, illegitimates' inheritance rights were subject to a rigid legitimation process over which the children themselves had no control; today illegitimate children have the option of seeking a post-mortem adjudication of paternity to obtain a share of their fathers' estates. The Mississippi Legislature went well beyond the mandate of the Supreme Court in providing a remedy for illegitimates with claims against their intestate natural fathers. Yet, in the process, the legislature also drafted the requirements so as to protect certain important state interests. In doing so, the legislature created a system of intestate succession of which it may fairly be said, as did Justice Dan Lee, that "[j]ustice will thereby prevail wherein all may take comfort, legitimates and illegitimates alike, that they will be treated equally under the laws of the State of Mississippi."<sup>108</sup>

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106. *Burdette v. Crump*, 472 So. 2d 959, 962 (Miss. 1985); *Miller v. Watson*, 467 So. 2d 672, 675 (Miss. 1985); *Berry v. Berry*, 463 So. 2d 1031, 1032 (Miss. 1984), *cert. denied*, 106 S. Ct. 90 (1985); *Stevenson v. Daniels*, 446 So. 2d 597, 598 (Miss. 1984).

107. See *supra* notes 70-78 and accompanying text.

108. *Larsen*, 447 So. 2d at 283.

