

IN THE COURT OF APPEALS OF TENNESSEE  
WESTERN SECTION AT NASHVILLE

---

**CORA H. BAXTER, et al,**

Plaintiffs-Appellees,

Vs.

Rutherford Chancery No. 94MI-285  
C.A. No. 01A01-9511-CH-00500

**CARL L. BEKOFKSKE, Administrator,  
et al,**

Defendants-Appellants.

---

FROM THE RUTHERFORD COUNTY CHANCERY COURT  
THE HONORABLE ROBERT E. CORLEW, III, CHANCELLOR

**FILED**

**May 24, 1996**

**Cecil W. Crowson  
Appellate Court Clerk**

Lucy D. Strickland of Murfreesboro  
For Appellees

Thomas F. Bloom of Nashville  
For Appellants

***AFFIRMED AND REMANDED***

Opinion filed:

**W. FRANK CRAWFORD,  
PRESIDING JUDGE, W.S.**

**CONCUR:**

**ALAN E. HIGHERS, JUDGE**

**DAVID R. FARMER, JUDGE**

Defendants, various cousins of L. R. Henry, deceased, appeal from the judgment of the trial court declaring that plaintiffs are L. R. Henry's nieces and nephews and are his heirs at law.

The crux of this case revolves around the relationship between two men, L.R. Henry and

John Willie Henry, born John William Henderson. John Willie Henry died in 1989, and L.R. Henry died intestate in 1990, leaving no spouse or children. It is undisputed that L.R. Henry was the son of John and Cornelia Henry. The question presented at trial was whether John Willie Henry was also the son of John Henry, and therefore the half-brother of L.R. Henry. According to the plaintiffs, daughter and sons of John Willie Henry, L.R. and John Willie were both sons of John Henry; thus, plaintiffs are the nieces and nephews of L.R. and take prior to defendants, L.R.'s first cousins, under Tennessee's laws of intestate succession. T.C.A. §§ 31-2-101 - 31-2-110 (Michie 1984 & Supp. 1995).

Testimony at trial revealed that John Willie was born the legitimate son of Adell Henderson, the wife of Sam Henderson, on June 10, 1920. Mrs. Henderson was sick when this child, her sixth, was born, so her brother-in-law, Bob Henderson, and his wife, Addie, temporarily took care of the infant. Within a year, Mrs. Henderson died and Mr. Henderson left Tennessee with his other children, settling in Kansas City. Although he visited Tennessee on several occasions, Mr. Henderson never took John Willie with him to Kansas City or developed a relationship with the child.

There was testimony at trial that Adell Henderson, knowing she was ill, asked the Henrys to care for John Willie. However, there was also testimony that John Willie was raised by the Henrys because Mr. Henderson's brother and sister-in-law were overburdened with their own children and John and Cornelia Henry had only one child, L.R., then age nine. Regardless, John Willie resided with the Henrys until he was an adult, and they raised John Willie as their own, calling him "son."

Plaintiffs introduced into evidence a Tennessee delayed birth certificate for John Willie Henry issued in 1941 showing John and Cornelia Henry as his parents (it is undisputed, however, that Cornelia Henry was not John Willie Henry's natural mother, and no adoption proceeding ever took place). Plaintiffs also introduced a deed, executed by John Henry in 1968 and recorded posthumously in 1975, conveying land "unto my two sons, John Willie Henry and L.R. Henry."

Cora Baxter, John Willie's daughter and a plaintiff herein, testified that she believed John and Cornelia Henry were her grandparents and L.R. Henry her uncle. She testified that she lived with the elder Henrys from infancy until she was approximately twenty years old. Cora recalled

that when she was about ten years old, Cornelia told her that Adell Henderson was John Willie's mother, but said nothing to Cora about the name of John Willie's father. Cora also testified that when L.R. died, Susye Rucker, John Henry's niece and a defendant in the present suit, called Cora to get Cora and her siblings' full names for L.R.'s funeral program. In the program, an exhibit in this case, Cora is listed as a niece of L.R. and her brothers are listed as nephews.

Mr. Sam Henderson, the son of Bob and Addie Henderson and nephew of Sam Henderson, John Willie's presumed father, also testified. He remembered that John Willie lived with his parents briefly when John Willie was an infant, and that John Willie was taken to live with the Henrys. He testified that both the community rumor and his own belief was that John Henry, not Sam Henderson, was the father of John Willie. He admitted that he based his belief on the fact that John Henry took John Willie into his home.

Kitty Brooks Nance testified on behalf of the plaintiffs. Ms. Nance, who was over one hundred years old at the time of trial, knew John Henry most of her life. She stated that, on one occasion, she heard John Henry say that John Willie was his blood son. Ms. Nance also believed that John Willie "favored" his daddy.

Defendants Sallie Washington and Louise Miller, first cousins of L.R. Henry, testified. Ms. Washington testified that she remembered children at the playground taunting John Willie, saying that he was not a Henry. She also remembered John Henry, her uncle, stating that John Willie was not his son.

Ms. Miller testified that her parents told her that the Henrys took John Willie into their home when he was a baby, but that he was the child of Sam and Adell Henderson. She testified that Sam Henderson (father) was present at a reunion, and that he spoke to John Willie there and declared John Willie his son. After hearing all of the testimony, the chancellor made the following findings:

I think considering the written documentation together with the testimony of the disinterested witnesses, and of course, recognizing the testimony of those who are parties who have testified, by only a small measure of the evidence I think the Court must find that in fact the plaintiffs have carried the burden of providing the clear and convincing proof that's necessary. Thus, I think the evidence here today does show that John Willie Henry was the biological child of John Henry.

Since this case was tried by the court sitting without a jury, we review the case *de novo* upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm, absent error of law. T.R.A.P. 13(d).

The weight, faith, and credit to be given to any witness' testimony lies in the first instance with the trier of fact. The credibility accorded will be given great weight by the appellate court. *Town of Alamo v. Forcum-James Co.*, 205 Tenn. 478, 483, 327 S.W.2d 47, 49 (1959); *Mays v. Brighton Bank*, 832 S.W.2d 347, 351 (Tenn. App. 1992).

In the instant case, where plaintiffs are attempting to establish paternity for the purpose of intestate succession, plaintiffs have two burdens to overcome. First, plaintiffs must rebut the legal presumption that a child born in wedlock is legitimate, *Jackson v. Thornton*, 133 Tenn. 36, 39, 179 S.W. 384 (1915); *Cannon v. Cannon*, 26 Tenn. (7 Hum.) 410 (1846), and second, plaintiffs must prove by clear and convincing evidence that the child was that of the alleged father. T.C.A. § 31-2-105(2)(B) (Michie 1984 & Supp. 1995); *see also Allen v. Harvey*, 568 S.W.2d 829, 835 (Tenn. 1978) (establishing that child born out of wedlock may inherit from his father where paternity is established by clear and convincing proof and where rights of inheritance have not finally vested). Under the facts of some cases, the two burdens merge into one. *In re Estate of Armstrong*, 859 S.W.2d 323, 328 (Tenn. App. 1993).

The heightened evidentiary burden of clear and convincing proof is not one that may be "satisfied by circumstances which merely 'suggest' or imply parentage, or even support probability. The circumstances must be such as to produce a state of conviction (by convincing) that the desired fact is indeed true." *Majors v. Smith*, 776 S.W.2d 538, 540 (Tenn. App. 1989). The *Majors* court noted, however, that "[t]he existence of a child born out of wedlock is not ordinarily announced with blaring trumpets to all who may hear. More often, it is a private affair, confided only to confidential friends. The fact that others were not told is, if circumstantial at all, a very weak circumstance." *Id.* at 540-41.

The trial court found that Sam Henderson, the presumed father, left Tennessee with all of his children but John Willie, and never returned for John Willie or otherwise established a relationship with him. The court found that John Willie, as well as John Willie's daughter Cora,

lived with Cornelia and John Henry up to and beyond the age of majority. John Willie's delayed birth certificate listed John Henry as the father, and established John Willie's last name as Henry. In a deed conveying land to his sons, John Henry named both L.R. and John Willie. Both John and Cornelia Henry called John Willie "son." Cora Baxter and her brothers are listed as L.R.'s nieces and nephews in L.R.'s funeral program. Ms. Nance, whom the court found to be a disinterested witness, testified that John Henry acknowledged John Willie as his blood son in her presence and the presence of others. Sam Henderson, the nephew of John Willie's presumed father, testified that the community believed John Willie was the natural son of John Henry.

It is the province of the chancellor as the trier of fact to give the testimony of each witness the weight, faith, and credit to which it is entitled. The chancellor determined from the proof that there was clear and convincing evidence that John Willie was John Henry's son. From our review of the record, we find that the evidence does not preponderate against the chancellor's finding. T.R.A.P. 13(d).

The judgment of the trial court is affirmed, and this case is remanded to the trial court for such further proceedings as are necessary. Costs of the appeal are assessed against appellants.

---

**W. FRANK CRAWFORD,  
PRESIDING JUDGE, W.S.**

**CONCUR:**

---

**ALAN E. HIGHERS, JUDGE**

---

**DAVID R. FARMER, JUDGE**