

IN RE:)	
)	
ESTATE OF CARLTON E. WALTON,)	
DECEASED,)	
)	
JEFFREY O. WALTON, Administrator,)	
)	
Plaintiff/Appellee,)	
)	Probate Court of Davidson County
VS.)	No. 94P-1705
)	
LESLIE YOUNG,)	Appeal No.
)	01A01-9605-PB-00221
Defendant/Appellant.)	

**IN THE COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE**

**APPEAL FROM THE PROBATE COURT OF DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE**

HONORABLE FRANK G. CLEMENT, JR., JUDGE

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<p>FILED</p> <p>August 28, 1996</p> <p>Cecil W. Crowson Appellate Court Clerk</p>

REVERSED AND REMANDED

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE
BEN H. CANTRELL, JUDGE

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O P I N I O N

Leslie Young intervened in the administration of the estate of Carlton Elliott Walton, deceased, asserting that she is the natural child of the deceased born out of wedlock, and seeking a declaration of legitimacy and entitlement to a child’s share of the estate. The Probate Judge, sitting without a jury, ruled as follows:

Upon testimony of witnesses, statement of counsel and the entire record in this cause, the Court was of the opinion that the Petitioner, Leslie Young, failed to carry the burden of proof with clear and convincing evidence to support her claim as the illegitimate daughter of the deceased, Carl E. Walton, and the petition should be denied and dismissed.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the Petition filed by the Petitioner, Leslie Young, to determine her status as the illegitimate daughter of the deceased, Carl D. Walton, is hereby denied and dismissed.

Ms. Young has appealed and presented to this Court issues for review in the following form:

1. The learned Trial Court erroneously found that Young failed to carry the burden of proof with the clear and convincing evidence that she was the illegitimate daughter of the deceased although the overwhelming, if not all the evidence, both by witnesses and documents, proved her to be the illegitimate daughter of the deceased.

2. The decision of the learned Trial Court is contrary to the law and evidence since both the law and the evidence preponderates against the verdict.

3. The finds (sic) and dismissal of Young's petition by the Court below as contrary to the law and evidence and the law and the evidence preponderates against that Court's decision.

The Circuit, Juvenile and Probate Courts have concurrent jurisdiction to legitimate children upon application of their natural father. T.C.A. § 36-2-201. Although the statute does not specifically confer jurisdiction upon the Probate Court upon application of a person other than the natural father, the jurisdiction has not been questioned in the present case, either in the Probate Court or in this Court.

In *Crocker v. Balch*, 104 Tenn. 6, 55 S.W.2d 307, it was held that county courts are courts of general jurisdiction in matters pertaining to the adoption and legitimation of children. The Probate Court of Davidson County is the successor of the county court of that county.

A child born out of wedlock who seeks to establish the right to inherit from the alleged father has the burden of establishing parenthood by clear and convincing evidence. *Woods v. Fields*, Tenn. App., 1990, 798 S.W.2d 239; *Majors v. Smith*, Tenn. App. 1989, 776 S.W.2d 538.

A claimant may be found to have born out of wedlock, even though the mother was married to another. *Adams v. Manis*, Tenn. App. 1993, 859 S.W.2d 323.

"Clear and convincing evidence" means evidence in which there is no substantial doubt about the correctness of the conclusions drawn from the evidence. *Hodges v. S.C. Toof & Co.*, Tenn. 1992, 833 S.W.2d 896.

In non jury cases, the decision of the Trial Judge as to the creditability of witnesses is entitled to great weight on appeal. *Wilder v. Wilder*, Tenn. App. 1992, 863 S.W.2d 707. Such

decision is conclusive upon the appellate Courts unless real evidence in the record compels a contrary conclusion. *State ex rel Balsinger v. Town of Madisonville*, 222 Tenn. 272, 435 S.W.2d 801 (1968).

In the present case, the claimant testified that she lived with deceased from time to time, that he listed her as his daughter on a mortgage contract, on a credit application, and that he signed an Easter card to claimant's son "grandpa Carl."

Helen Underhill testified that deceased introduced claimant as his daughter.

Donna Fowler testified that she was the mother of claimant, that she had sexual relations with deceased during 1971 while she was married to, but separated from, Frank Jackson, Jr.; that deceased came to the hospital to see claimant when she was born; that deceased visited her regularly and contributed to the support of claimant; that she and deceased supported claimant during her pregnancy and that deceased developed a loving relationship with the child of claimant.

Claimant offered blood test results indicating that Frank Jackson, husband of the mother at the time of conception, was not the father of the child. However, evidence is also in the record that in pleadings in divorce proceedings, the mother and the same Frank Jackson had asserted parenthood of the child. Frank Jackson testified that he was aware that Plaintiff was not his biological child, but that he raised her as his own.

Lynn Allen testified that deceased introduced claimant to him as his daughter.

Shawn A. Jackson, son of Frank Jackson, testified that deceased stated to him that claimant was his daughter. Jennifer Jackson, wife of Shawn A. Jackson testified the same.

Tom Nangle, real estate broker testified that deceased introduced claimant to him as his (deceased's) daughter.

Melissa McCord, a receiving clerk who dealt with deceased, testified that deceased stated that claimant was his daughter and that her son was his grandson.

Susan Hicks a co-worker with deceased testified that he introduced claimant as his "young'n," but not as his daughter.

Donna Karnes testified that deceased stated "This is Leslie, her mother says she's mine."

At the conclusion of the Trial, the Probate Judge stated:

Though it's natural that the petitioner's mother would continue for years her representation that Mr. Jackson was the father, because she was married to him when Ms. Young was born, I cannot overlook the fact that the mother made representations for years in more than one lawsuit that he was the father and, in essence, required or had the ability to require that Mr. Jackson financially support and raise the petitioner, but now that the financial obligation is gone she does a hundred and eighty degree reversal and claims that Mr. Walton was the father.

I don't have the ability to decide today whether she is telling the truth that Mr. Walton was the father or whether as a matter of absolute certainty that he was, but that's the only evidence that's been introduced through, I think it's Mr. Fowler, Donna Fowler that Mr. Jackson was not the father but Mr. Walton was. Yet her credibility has been impeached because she has been shown to have sworn under oath to the contrary. Several witnesses testify that the decedent Carl Walton claimed that the petitioner was his daughter and that the petitioner's son was his grandson. Others have taken issue with that and claimed that what he was really saying was that she was his young'n and/or that he called lots of young people his young'n and/or that he stated, well, she's -- I'm not saying she's my daughter, I'm saying that her mother says she's my daughter.

I am of the impression that the sole basis upon which Mr.

Walton believed, if he did believe, that he was the father was based upon a representation by Ms. Fowler and since her credibility has been challenged and she has been shown to have testified falsely in other matters, I can only determine that the petitioner has failed to convince this Court by clear and convincing evidence that the decedent was her biological father and therefore the petition is denied.

The Dead Man's Statute (T.C.A. § 24-1-203) is inapplicable to a proceeding, the result of which can neither increase nor diminish the size of the estate, but concerns only the manner in which the assets will be distributed *Baker v. Baker*, 24 Tenn. App. 220, 142 S.W.2d 737 (1940). Therefore the claimant was a competent witness to the statements and acts of deceased.

Where a child is born out of wedlock, lived with his biological father and mother, and the father openly acknowledged, claimed and supported the child, the child was entitled to inherit through the biological father. *Allen v. Harvey*, Tenn. 1978, 568 S.W.2d 829.

In the present case there is extensive uncontradicted testimony that the deceased recognized and acknowledged claimant as his daughter. The use of the word "young'n" instead of child or daughter is not a contradiction, but a synonym for child or daughter.

The contradictions between the declarations and testimony of the mother do reflect upon her credibility, but do not contradict the positive testimony of the other witnesses. It is a rule of law in this state that contradictory statements of a witness in connection with the same fact have the result of "cancelling each other out". *Taylor v. Nashville Banner Publishing Co.*, Tenn. App. 1978, 573 S.W.2d 476, *cert. denied*. 99 S.Ct. 2032, 441 U.S. 923, 60 L.Ed 2d 396, and authorities therein cited. If conflicting testimony cancelled or impeached the testimony of the mother, it has no contradictory effect upon the other testimony which stands uncontradicted.

There is uncontradicted testimony of sexual relations between the mother and the deceased at the time of conception; of the scientific improbability and denial of biological

parenthood by the husband of the mother; of numerous acknowledgements of parenthood by the deceased and acts consistent with such acknowledgement.

Upon consideration of the record de novo, this Court finds clear and convincing evidence that the deceased was the biological father of the claimant.

The judgment of the Trial Court is reversed. On remand, a judgment will be entered declaring the parenthood of deceased and the rights of the claimant to participate in the inheritance of the property of the deceased the same as a legitimate child. Costs of this appeal are taxed against the estate of the deceased. The cause is remanded to the Probate Court for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

HENRY F. TODD
PRESIDING JUDGE, MIDDLE SECTION

CONCUR:

SAMUEL L. LEWIS, JUDGE

BEN H. CANTRELL, JUDGE