

Memorandum 95-17

Inheritance From or Through Child Born Out of Wedlock

Attached to this Memorandum is a staff draft of a Tentative Recommendation on Inheritance From or Through Child Born Out of Wedlock. The staff draft proposes to delete the "except" clause from Probate Code Section 6452. Section 6452 was enacted on Commission recommendation. Problems caused by the "except" clause have come to the staff's attention from an appellate decision (*Estate of Corcoran*, discussed in the staff draft), and from communications from attorneys.

Exhibit 1 is a letter from attorney Chilton Lee of Palo Alto urging that we address the problem created by the "except" clause. Exhibit 2 is a letter from attorney Erika Senter of Santa Ana pointing out that in *Corcoran* the "estate was most definitely not distributed the way the decedent would have wanted." (The relevant part of her letter begins on page 2; both letters refer to now-obsolete Probate Code section numbers, but the substance remains pertinent.) The opinion in *Estate of Corcoran* is attached as Exhibit 3.

Professor Edward Halbach has reviewed the attached staff draft and supports it. The staff recommends we distribute it for comment.

Respectfully submitted,

Robert J. Murphy
Staff Counsel

LAW OFFICES OF

CHILTON H. LEE

A PROFESSIONAL CORPORATION

605 STANFORD FINANCIAL SQUARE
2600 EL CAMINO REAL
PALO ALTO, CALIFORNIA 94306
(415) 493-8836Law Revision Commission
RECEIVED

OCT 25 1993

File: _____

Key: _____

October 22, 1993

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303

Re: Intestate Succession/Probate Code Section 6408(d)

Ladies and Gentlemen:

I would like to point out to you the need for a possible revision to Probate Code Section 6408(d). In January, 1985, the California Law Revision Commission published its "Recommendation Relating to Effect of Adoption or Out-of-Wedlock Birth on Rights at Death", 18 Cal. L. Revision Comm'n Reports 289 (1986) in which it recommended two revisions to Probate Code Section 6408.5(c) which has now been renumbered to Probate Code Section 6408(d). The stated reason for one recommendation was to make it clear that the issue of a child born out of wedlock or a natural brother or sister of that child or the issue of that brother and sister was not precluded from inheriting from or through the child who was born out of wedlock. The recommendation was adopted by the legislature. However, no distinction was made between half blood or wholeblood siblings. In Estate of Corcoran, 7 Cal. App.4th 1099 (1992), it was held that half blood sibling of a child born out of wedlock was entitled to inherit from the child born out of wedlock. The half blood sibling was the product of a subsequent marriage of the biological father of the child born out of wedlock. The court in the Corcoran case pointed out that Section 6408(c) provided that "Neither a parent nor a relative of a parent (except for the issue of the child or a wholeblood brother or sister of a child or the issue of that brother or sister) inherits from or through a child on the basis of the relationship of parent and child if the child has been adopted by someone other than the spouse or surviving spouse of that parent." The court then pointed out that if the legislature intended the exception for natural brothers or sisters in Section 6408(d) to be restricted to wholeblooded siblings, the legislature should have so specified since it did make that specification in Section 6408(c). I believe that the legislature may have overlooked that possible distinction since the California Law Revision Commission recommendation referred to above only was concerned with what is now Section 6408(d) and did not even mention or have any changes to Section 6408(c).

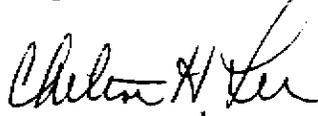
Page 2
California Law Revision Commission
October 22, 1993

It would seem inequitable for children who are born out of wedlock who have no family ties with each other to inherit from each other.

I presently have a case where the decedent was born out of wedlock and was raised by her mother, aunt, and grandmother, and now an alleged half sibling who was also born out of wedlock to a different mother but possibly the same father, claims a right of intestate succession.

Your attention to this matter would be appreciated. If you have any questions or comments concerning it, please feel free to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Chilton H. Lee".

Chilton H. Lee

CHL/clm

ERIKA W. SENTER

ATTORNEY AT LAW

December 6, 1993

UNIVERSITY TOWER
4199 CAMPUS DRIVE
SUITE 700
IRVINE, CALIFORNIA 92715Law Revision Commission
RECEIVEDTEL (714) 854-5309
FAX (714) 854-4897ROBERT J. MURPHY, ESQ.
STAFF COUNSEL
CALIFORNIA LAW REVISION COMMISSION
4000 MIDDLEFIELD ROAD, SUITE D-2
PALO ALTO, CA 94303-7439

DEC 10 1993

File: _____
Key: _____RE: ESTATE OF REEDY; THE NEW INTESTATE SUCCESSION LAW, ETC.

Dear Mr. Murphy;

It was nice speaking with you on the phone last Friday.

First, let me thank you again for your communication of October 27, 1993 concerning the Commission's view on the intestate succession issues that are raised in Estate of Reedy. I have lodged your complete communication to me, which included your Memorandum 91-56 of 8/28/91, with the California Supreme Court; enclosed, for your information, is a copy of my cover letter to the Court. Also, please find a copy of the notice I have received from the Supreme Court advising that the time for granting or denying review on Reedy is extended to January 11, 1994. While the Court's reason for extending the time to act on the Reedy Petition is a matter of pure speculation, it may be that the Court is waiting to have the new intestate succession law take effect so it can then send the matter back to the appellate court for reconsideration in light of said new enactment.

It is true, as you point out, that the new legislation does not directly address the problems raised in Reedy; however, the altered language coupled with the new grouping and separate numbering system (according to subject) does make it easier to see that the "exception" clauses are not intended to exclude issue and siblings of adoptees (and of out-of-wedlock children) from the general requirement that succession rights pass "from" or "through" a recognized parent-child relationship. You will note that, among other things, the current appellate decision in Reedy completely ignores the words "from and through the child" that are contained in 6408(c). It is one of my arguments that these words must be addressed when construing the code section. Respondent contends that those words are irrelevant to determining the succession rights in Reedy because the "exception" clauses mean that the Legislature has created, for the issue and siblings of an adoptee or of an out-of-wedlock child, a specific exclusion from the general requirement that succession rights pass via the parent-child relationship.

In other words, Reedy takes Professor Dukeminier's argument of an affirmative grant to an adoptee's siblings to inherit from the adoptee one step further. Respondent has pointed to the "notwithstanding" introductory language in former 6408.5 and argues that it shows that the Legislature made exceptions to the general requirement that succession rights are determined by parent-child relationships. She argues that the parenthetical clauses specifically exclude what is inside the parenthesis from the inheritance scheme set

Letter, Robert Murphy, Esq.
Page, 2
December 6, 1993

forth in the remainder of the code section. Respondent argues that the "except" clauses mean that the Legislature lifted the determination of succession rights for issue and siblings of adoptees and out of wedlock children entirely out of the requirement that the inheritance must pass "from" a child or "through" a parent-child relationship. And, Respondent finds much in Estate of Corcoran to support her argument. Although, on behalf of my client in Reedy, I do argue strenuously that Corcoran is different (and there are a number of additional reasons why Reedy was incorrectly decided), the fact remains that Corcoran does support the position of a special "affirmative" grant of the right to inherit unfettered by parent-child relationship requirements which otherwise are mandated in the Probate Code. For some of the same reasons why you regard the Dukeminier position as to inheritance rights by siblings of adoptees an unacceptable anomaly, I consider Corcoran to be wrong. (Incidentally, I appealed Corcoran to the California Supreme Court; review was denied. If you wish to see my briefs, I'd be happy to send them.)

In Corcoran the estate went to persons with whom the decedent had no meaningful contact during her lifetime. The estate was most definitely not distributed the way the decedent would have wanted. Although the facts in the case are silent on this, it is entirely possible that Mrs. Corcoran wasn't even aware that she had "halfblood siblings" through the biological father who had never acknowledged or supported her. She was raised as an only child by her mother and her mother's family. Even though Mrs. Corcoran could not have inherited from her halfbloods or from her "out-of-wedlock" father, who is the common parent-child link between them, because the conditions of 6408(f) [6453 under the new legislation] were not met, the halfbloods were able to inherit from Mrs. Corcoran.

I argued in Corcoran that the question was not whether Respondents had equal rights to inherit as "halfblood" siblings, but whether Respondents could be considered to be Mrs. Corcoran's "natural" brother and sister at all since their only common parent, the "father," was never Corcoran's "natural parent" under 6408(f). I argued that as claimed "brother or sister," Respondents had to trace their right to inherit from Mrs. Corcoran "through" a legally recognized parent-child relationship; that is, that they must first show that the requirements of 6408(f) are met for at least one (1) common "natural parent." One cannot be a "natural" brother or sister of another, I argued, unless there is at least one legally recognized "natural" parent in common between them. The court termed my argument "an analytical labyrinth from which there is no escape" and ruled against me, noting that the Legislature used the term "wholeblood" in 6408(c) and that "the Legislature knows how to specifically exempt half-siblings." The Corcoran court concluded that if the brother/sister relationship were always dependent on the existence of a "legal" parent-child relationship "it would read the brother-sister exception right out of the code."

I disagreed. My explanation was that the parenthetical clause in 6408(d) was intended only to relieve the issue and natural siblings of the child from the general requirement of having to show support and acknowledgment of the child before they can inherit. It does not, however, relieve a sibling from the

Letter, Robert Murphy, Esq.
Page, 3
December 6, 1993

need to rely on the existence of a legally recognized connecting parent-child relationship. I argued that the exception clause would always have meaning where the connecting relationship runs through the mother because the law presumes her parenthood, whether she supports the child or not. Wholeblood siblings, I argued, therefore always inherit even where there was no support and acknowledgment from either parent because such siblings can always trace the sibling relationship through at least one legally recognized "presumed" parent, the mother. Likewise, halfbloods whose sibling relationship runs through a "presumed" father also always inherit irrespective of whether that connecting presumed father supported or acknowledged the child. And, those halfbloods who resort to the courts to establish the connecting paternity relationship to a non-presumed, non-acknowledging, non-supporting father also inherit because the necessary relationship is established by decree. It is, I said, only those "siblings," like the Corcoran Respondents, who cannot show a legally recognized connecting parent-child link who are not protected by the exception clause in the statute.

Unfortunately, the court was not persuaded. My guess is that the interconnecting statutory scheme made everything much too convoluted (it presented an "analytical labyrinth"). The Supreme Court did not grant review. Regrettably for my client in Reedy, the Corcoran reasoning, that "the biological connection alone" suffices to establish the requisite parent-child relationship, sounded the death knell. To make matters worse, if the reasoning in Corcoran and Reedy and Estate of Sanders (1992) 2 CA 3d 462 are combined, there is now an absolute probate nightmare! Think of it; for instance, whereas the out-of-wedlock child who cannot satisfy the requirements of 6408(f) is precluded from inheriting from the biological father or his family, the grandchildren are not. This leads to the conclusion that, in every probate which involves the estate of a man who may have knowingly or unknowingly fathered children whom he did not acknowledge, there are possible unknown heirs who need to be located before the estate can close. A totally absurd situation!

As said, the new grouping by subject and separate numbering in the new legislation makes it much clearer that succession rights do flow through a legally recognized parent-child relationship, at every level. I note that the new legislation [Prob. C. 6452] inserts the word "natural" before the word "parent" rather than placing it before "brother and sister." While this new change eliminates some of the problems I had with Corcoran, I see that the half-blood/whole-blood language is still part of the statutory scheme. It is those confusing terms that cause a major problem in analyzing a Corcoran situation. Not only is the language antiquated, but there is significant conflict between 6406 and the "natural parent" and the "stepparent" provisions [6453 and 6454 under the new law]. Probably what is most needed is a definition of "brother and sister" under modern parent-child relationships rules to replace the antiquated wholeblood/halfblood language.

I submit that "halfblood/whole-blood" are terms which no longer have a real place in the modern scheme of parent-child relationships. Modernly, the parent-child relationship is a legal relationship which does not necessarily

Letter, Robert Murphy, Esq.
Page, 4
December 6, 1993

follow the bloodlines. Note, that not even the term "natural parent" under 6453 is defined by bloodlines. In fact, I don't see that 6406 serves any further purpose whatsoever; it adds enormous confusion and leads to unrealistic results. To illustrate my point: imagine two children are raised as full siblings by parents A and B. Both parents die in a car accident, and the children are adopted by different families. Unknown to the children, child 1 was not the blood of parent A and is only halfblood to child 2. Parent A never legally adopted the child because of a legal barrier. Child 1 dies, leaving an estate. Under the present scheme child 2 does not inherit from child 1, even though both children satisfy the legal requirements of a parent-child connection to the same two parents? Is that what the legislation intends?

Come to think of it, what's the reason for the adjective "wholeblood" in the exception clause of 6408(c)? My guess is that it is put there to prevent half-sibling inheritance where one parent dies before the adoption and the surviving parent, who consented to the adoption and therefore severed the parent-child relationship with the adoptee, has a child with someone else. Is this not a way of saying that siblings must connect with each other at least through one (1) legally recognized parent-child relationship? However, when it is the common parent who dies before the adoption, and therefore the common natural parent-child link is not severed by any post-death adoption, why shouldn't the half-siblings inherit from each other?

This letter has become much longer than I intended; I apologize for my verbosity. Please call if you have questions or concerns.

Very truly yours,



ERIKA W. SENTER

ag/EWS
enclosures as indicated

ESTATE OF CORCORAN

475

7 Cal.App.4th 1101

Cite as 9 Cal.Rptr.2d 475 (Cal.App. 4 Dist. 1992)

pleading can be amended to state a cause of action. (*Ibid.*)

[11, 12] While the showing as to how the complaint may be amended need not be made to the trial court and can be made for the first time to the reviewing court (*Carson & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1386, 272 Cal.Rptr. 387), New Plumbing's argument raised for the first time at oral argument is not adequate to justify our finding the trial court abused its discretion. New issues cannot generally be raised for the first time in oral argument. (*Japan Line, Ltd. v. County of Los Angeles* (1977) 20 Cal.3d 180, 184, 141 Cal.Rptr. 905, 571 P.2d 254, reversed on other grounds in *Japan Line, Ltd. v. County of Los Angeles* (1979) 441 U.S. 434, 99 S.Ct. 1813, 60 L.Ed.2d 336.) Furthermore, New Plumbing has offered no authority demonstrating that these new causes of action are viable, nor did it offer any facts in support other than the conclusion Nationwide had mishandled the claim.

The judgment is affirmed.

CROSBY, Acting P.J., and
SONENSHINE, J., concur.



7 Cal.App.4th 1099

11099 ESTATE OF Hazel Marie
CORCORAN, Deceased.

Lily PAPACEK, Petitioner
and Appellant,

v.

Thomas GAUGHAN, Claimant
and Respondent.

No. G011188.

Court of Appeal, Fourth District,
Division 3.

June 29, 1992.

As Modified on Denial of
Rehearing July 20, 1992.

Review Denied Sept. 24, 1992.

Appeal was taken from an order of the
Superior Court of Orange County, Tully H.

Seymour, J., which rendered judgment in probate proceeding. The Court of Appeal, Sills, P.J., held that intestate decedent's half-brother was a "natural brother" within meaning of statute prohibiting inheritance by or through parent of child born out of wedlock if that parent does not acknowledge or support child, except for "natural" brothers and sisters.

Affirmed.

Children Out-of-Wedlock §§85, 86

Intestate decedent's half-brother was her "natural brother" under provision of Probate Code prohibiting inheritance by or through parent of child born out of wedlock if parent does not acknowledge or support child, except for "natural" brothers and sisters. West's Ann.Cal.Prob.Code § 6408(d).

See publication Words and Phrases
for other judicial constructions and
definitions.

11100 Geller and Senter, Erika W. Senter
and Norbert R. Bunt, Santa Ana, for peti-
tioner and appellant.

Michael J. Peltin, Woodland Hills, and
Bernard Grossman, Granada Hills, for
claimant and respondent.

11101 OPINION

SILLS, Presiding Justice.

It is widely known that "where there is a will, there is a way." The laws of intestate succession, however, provide us a way even where there is no will. This appeal requires us to chart our "way," and presents an issue of first impression: Is a half-sibling a "natural brother or sister" under former Probate Code section 6408.5, subdivision (c) (now section 6408, subd. (d))? If so, respondent Thomas Gaughan, the half-brother of the decedent, along with the children of the decedent's half-sister, is entitled to the estate of the decedent; if not, appellant Lily Papacek and nine other maternal cousins of decedent are the next in

succession. The trial court held that the term "natural brother or sister" includes half-siblings. We agree with the trial court, and affirm.

FACTS

The facts are not in dispute and can be easily summarized. The decedent, Hazel Marie Corcoran, died on July 30, 1989, and has no surviving spouse, parents, or children. She also left no valid will.¹ Hazel was born out of wedlock to Merle Campbell and Michael Gaughan in 1922. There was no evidence presented that Michael Gaughan ever acknowledged Hazel as his daughter. Hazel was raised by her mother, who died in 1982. Hazel's father married another woman in 1931 and had two children, Monica Gaughan and respondent Thomas Gaughan.

DISCUSSION

Probate Code section 6408,² one of the laws of intestate succession, concerns the definition of a "parent and child relationship." Subdivision (d) of that statute (formerly § 6408.5, subd. (c)) provides as follows: "If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child *or a natural brother or sister of the child or the issue of that brother or sister*) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied: [¶] (1) The parent or a relative of the parent acknowledged the child. [¶] (2) The parent or a relative of the parent contributed to the support or the care of the child." (Italics added.) Essentially, the statute prohibits inheritance by or through a parent of a child born out of wedlock if that parent does not acknowledge or support the child, except for "natural" brothers and sisters.

1. There was evidence that the decedent attempted to draw up a will, but it was improperly executed and never admitted to probate.
2. All statutory references are to the Probate Code unless otherwise specified.
3. This conclusion is in accord with the trial court; in its minute order it stated: "The Court

¹¹¹⁰²In this case, if decedent's half-brother is considered a "natural brother" under the statute, it is an exception to the statutory rule that the parent must acknowledge and support the child in order to qualify as an heir. Since Hazel's father neither acknowledged nor supported her, Thomas Gaughan (along with his sister's children) can only take under the laws of intestate succession if they come within the ambit of the statutory exception. The question, reduced to its simplest form, is this: Is a half-brother a natural brother?

For at least two reasons, we think a half-sibling is a "natural brother or sister" under the statute. First of all, section 6406 states the general rule: "Relatives of the halfblood inherit the same share they would inherit if they were of the whole blood." As far as is relevant here, this has been the rule in California since 1931. (See Historical and Statutory Notes, 52 West's Ann.Prob.Code (1991 ed.) § 254, p. 168.) We find no language in section 6408, subdivision (d) which expresses any intent to override this general rule.

Second, it is clear that the Legislature knows how to specifically exempt half-siblings from intestate succession. Subdivision (c) of section 6408 provides that a relative of an adoptive parent does not inherit from the adoptive child except for "a *wholeblood* brother or sister of the child..." (Italics added.) Since the Legislature used the term "wholeblood" in subdivision (c) of the statute but not in subdivision (d), we would be hard pressed to conclude that the omission of the term in subdivision (d) was inadvertent.³

Appellant's attempt to evade the clear language of the statute is unavailing. Under her theory, Michael Gaughan was never the decedent's father because he neither acknowledged his daughter nor supported her, and therefore any descendants of Mi-

believes that in using the term natural child in Probate Code Section 6408, the legislature intended to differentiate between a child acquired by its parents by birth and an adoptive child, but did not intend to exclude siblings of the half blood."

chael are likewise unworthy to inherit. Appellant's argument ignores the plain meaning of the statute, which provides an exception to the usual rule that the parent of a child born out of wedlock must acknowledge and support the child. The exception is where the child has brothers or sisters, *regardless of the conduct of the parent*. Here, it is irrelevant that Michael Gaughan never acknowledged the decedent, since the decedent had a "natural brother and sister" under the Probate Code.⁴

Appellant also argues that respondent cannot be decedent's half-brother because a brother-sister relationship can only come about through a preexisting "legal" parent-child relationship, and Michael Gaughan was never decedent's "father." If we accepted appellant's argument, however, it would result in an analytical labyrinth from which there is no escape. The brother-sister relationship would always be dependent upon the existence of the parent-child relationship as defined by the remainder of section 6408, subdivision (d), thus reading the exception for natural brothers and sisters right out of the statute. Under the facts of this case, with an undisputed biological father and no competing "presumed father" under Civil Code section 7004, the biological connection alone is sufficient to establish the brother-sister relationship.

DISPOSITION

The judgment determining heirship and entitlement to the estate is affirmed.

MOORE and SONENSHINE, JJ., concur.



⁴ It is for this very same reason that appellant's reliance on *Estate of Sanders* (1992) 2 Cal.App.4th 462, 3 Cal.Rptr.2d 536 is misplaced. In *Sanders*, the court correctly ruled that a child born out of wedlock did not inherit from the deceased putative father, in part because that father did not acknowledge or support the child.

John SEAMAN, et al., Plaintiffs
and Appellants,

v.

PFIZER INC., et al., Defendants
and Respondents.

G010651.

Court of Appeal, Fourth District,
Division 3.

June 29, 1992.

Review Denied Sept. 24, 1992.*

Shareholders' derivative action was commenced relating to sale of defective heart valves and alleged attempted cover-up. The Superior Court, Orange County, No. 62-08-87, Francisco F. Firmat, J., granted relief under doctrine of forum non conveniens, and shareholder plaintiffs appealed. The Court of Appeal, Crosby, Acting P.J., held that California was not inconvenient forum and, thus, doctrine of forum non conveniens could not be invoked.

Reversed with directions.

Moore, J., filed dissenting opinion.

1. Courts ⇄28

Forum non conveniens doctrine only applies to forums that are, for one reason or another, inconvenient; only when inconvenience is established is it appropriate to search for alternate forum.

2. Courts ⇄28

Doctrine of forum non conveniens will not be employed if suitable alternate forum cannot be found, notwithstanding inconvenience of local forum.

3. Courts ⇄28

"Inconvenient forum," for purposes of doctrine of forum non conveniens, is one where none of the parties is a resident or a substantial or primary nexus of the lawsuit lies elsewhere.

See publication Words and Phrases for other judicial constructions and definitions.

(*Id.* at p. 471, 3 Cal.Rptr.2d 536.) There is no dispute in the present case that Hazel's father never acknowledged her, but that is irrelevant under section 6408, subdivision (d), because Hazel has natural siblings.

* In denying review, the Supreme Court ordered that the opinion be not officially published.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Staff Draft

TENTATIVE RECOMMENDATION

Inheritance From or Through Child Born Out of Wedlock

March 1995

This tentative recommendation is being distributed so that interested persons will be advised of the Commission's tentative conclusions and can make their views known to the Commission. Any comments sent to the Commission will be a part of the public record and will be considered at a public meeting when the Commission determines the provisions it will include in legislation the Commission plans to recommend to the Legislature. It is just as important to advise the Commission that you approve the tentative recommendation as it is to advise the Commission that you believe revisions should be made in the tentative recommendation.

COMMENTS ON THIS TENTATIVE RECOMMENDATION SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN July 7, 1995.

The Commission often substantially revises tentative recommendations as a result of the comments it receives. Hence, this tentative recommendation is not necessarily the recommendation the Commission will submit to the Legislature.

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739
(415) 494-1335 FAX: (415) 494-1827

INHERITANCE FROM OR THROUGH CHILD BORN OUT OF WEDLOCK

With one exception, if a child is born out of wedlock, neither a natural parent nor a relative of that parent may inherit from or through the child on the basis of the parent and child relationship between that parent and the child unless the parent or a relative of the parent acknowledged and contributed to the care or support of the child.¹ The exception permits a brother or sister of the child or the issue of that brother or sister to inherit from the child notwithstanding failure of the parent or relative to acknowledge and support the child.²

The exception creates an undesirable risk that the estate of a deceased out-of-wedlock child will be claimed by siblings with whom the decedent had no familial contact during lifetime and of whose existence the decedent was unaware. This is illustrated by *Estate of Corcoran*.³ In the *Corcoran* case, the father had an out-of-wedlock daughter, Hazel, in 1922. The father did not acknowledge or support her. In 1931, the father married another woman. He had two children of that marriage, Thomas and Monica. Hazel died in 1989. Thomas, the half-brother, claimed a right to inherit from Hazel. There was no evidence that Hazel knew of Thomas' existence. Had Hazel made a will, she would not have provided for him. Although the court held the half-brother would inherit in preference to Hazel's cousins, it appears Hazel would have wanted her estate go to her cousins.⁴

Intestate succession law provides for a distribution that the average decedent probably would have wanted if an intention had been expressed by will.⁵ It is unlikely an out-of-wedlock child would include siblings in a will in circumstances where the parent or relative never acknowledged, supported, or cared for the out-of-wedlock child. The Law Revision Commission recommends that the statutory exception for siblings of an out-of-wedlock child be deleted.⁶ This would impose

1. Prob. Code § 6452. Section 6452 is satisfied if the parent acknowledged the child and a relative of the parent provided the support, or vice versa.

2. *Id.*

3. 7 Cal. App. 4th 1099, 9 Cal. Rptr. 475 (1992).

4. Attorney Chilton Lee of Palo Alto reports a case where the decedent was born out of wedlock and was raised by her mother, aunt, and grandmother. When she died, inheritance was claimed by an alleged half-sibling who had been born out of wedlock to a different mother. The half-siblings did not know each other. Letter from Chilton Lee to California Law Revision Commission (Oct. 22, 1993) (on file in office of Law Revision Commission).

5. Niles, *Probate Reform in California*, 31 Hastings L.J. 185, 200 (1979).

6. The prohibition against inheriting from a deceased out-of-wedlock child could be limited to half siblings, since that is the usual fact situation, and presents the greatest likelihood that the decedent would have had no familial contact with them during lifetime. *Cf.* Prob. Code § 6451(b). However, the likelihood of an out-of-wedlock child not acknowledged or supported by the parent but having wholeblood siblings is remote. For this reason, the exception is not worth preserving for wholeblood siblings. Deleting the exception in its entirety will make the statute clearer and easier to understand and apply.

on siblings and their issue the same standard for inheriting as a parent who failed to acknowledge or support the out-of-wedlock child.⁷

7. It will also minimize the opportunity for fraudulent claims against the estate of the out-of-wedlock child by strangers.

RECOMMENDED LEGISLATION

Prob. Code § 6452 (amended). Effect of birth out of wedlock

6452. If a child is born out of wedlock, neither a natural parent nor a relative of that parent ~~, except for a brother or sister of the child or the issue of that brother or sister,~~ inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied:

(a) The parent or a relative of the parent acknowledged the child.

(b) The parent or a relative of the parent contributed to the support or the care of the child.

Comment. Section 6452 is amended to delete the "except" clause. This makes siblings of a child born out of wedlock and their issue subject to the same requirements under Section 6452 as other relatives of the out-of-wedlock child. This changes the rule in Estate of Corcoran, 7 Cal. App. 4th 1099, 9 Cal. Rptr. 2d 475 (1992).