CHOCTAW TRIBAL SUPREME COURT
OF THE
MISSISSIPPI BAND OF CHOCTAW INDIANS

IN THE MATTER OF THE ESTATE OF
SALLY BILLY, DECEASED,
LONIE COMBY, ADMINISTRATRIX — APPELLANT

V. — NO: SC 2016-09

NANNIE BILLY ISAAC, RHONDA B. LOPEZ,
ROBERT F. BILLY, BOBBY WATKINS, JANIE BILLY
RAFEAL BILLY, AND STACEY BILLY — APPELLEES

OPINION AND ORDER

SUMMARY: This is an appeal from a lower court ruling and order in an estate probate proceeding filed by Lonie Comby, as Administratrix of the Estate of Sally Billy. Only two of the eight children of the decedent remain alive. Three of the other six siblings died before their mother and three passed away after their mother's death, but before this case came on for lower court hearing and decision on July 6, 2016. There are a total of ten children of those six deceased children who would stand next in line of succession to inherit their respective parents' share under one interpretation of the governing intestate probate provision, CTC § 12-2-1. An alternative interpretation of the language of that statute would result in the division of the estate among the two surviving children and the six grandchildren of the three parents who were still alive at the time decedent passed, but have since died. The appellant's position is principally that only the two **living heirs** should equally inherit. Counsel at oral argument for each of the three groups of prospective heirs agree that there are confusing internal inconsistencies in the language of the governing statute, CTC Sec. 12-2-1, leaving it open to interpretation in favor of awarding equal shares among any of the three prospective groups of heirs.

The trial court ordered that a one-eighth interest be awarded to each the original eight children of decedent. For the children of each of those six siblings who are now deceased, their one-eighth interest would be divided equally amongst their own children. Based on the analysis and determination set forth below, this Court affirms the ruling of the lower court.

PROCEDURAL HISTORY

On August 2, 1995, the decedent Sally Billy passed away, leaving no will. She had been the mother of eight children, she was a tribal member, and at the time of her death she had owned her fixed place of residence on the tribal lands of the Mississippi Band of Choctaw Indians. Three of her children had predeceased her. By the time of the filing of a Petition to Open Estate and to Issue Letters of Administration by the Petitioner, Lonie Comby, on September 15, 2003, a fourth of the eight children had also passed away. A Judgment Appointing Lonie Comby Estate Administratrix and granting her Letters of Administration was entered April 29, 2004.

It was not until eight years later on January 12, 2016, however, that counsel for Petitioner Administratix filed a motion for a status hearing. By then, two more of the children had died, leaving only the Administratrix and one other daughter as the immediate surviving children of decedent. There were, however, a total of ten grandchildren who were children of the six deceased children of decedent Sally Billy. The status hearing was held on February 3, 2016.

A petition for declaratory judgment dated March 16, 2016 was then filed. Shortly thereafter, the necessary notice to creditors was issued; summons by publication were made; and after affidavit of notice to creditors was entered, a notice to defendants dated April 15, 2016 summoned all defendants to appear in court on May 18, 2016.

On July 6, 2016, proceedings were held before the Hon. Jeffrey Webb. Counsel for all three interest groups presented their arguments on the formula by which the estate should be awarded to heirs, including prospective heirs. In addition to counsel appearing for petitioner administratrix Lonie Comby, a second attorney appeared in representation of Geraldine Billy Denson, a grandchild of decedent. Her father, Robert Billy, was one of those three siblings who had died after the death of Sally Billy. A third attorney appeared representing Jamie Billy, also a grandchild of decedent. Her father, Bobby Billy, was one of the three children who had predeceased Sally Billy.

Therefore, the interests of each of the three groups of potential heirs[1] to the estate corpus were represented and argued before the court. Both surviving children, Lonie Comby and Nannie Billy Isaac, were also afforded opportunity to express their respective interests and concerns regarding the property and its division.

On August 17, 2016, Judge Webb issued the court's four-page Memorandum Opinion and Order. His ruling recognizes that CTC §12-2-1 sets forth the rule of intestate succession and that the second provision governed estate divisions and awards in situations of this nature. That code provision is worded as follows: "if the deceased shall have any living issue then *per stirpes*, with the root generation to be the children of the deceased." His opinion recognizes that "at first glance, it could be concluded that only living children of the deceased take any part of the estate. However, upon more careful review, it concluded that "the overall purpose of the statute appears to provide a different result." [Op. p. 2.] Citing definitions in *Black's Law Dictionary* and Mississippi's interpretive case law of *Griffin v. Doss,* 411 So.2d 766 (Miss. 1982), the lower court ultimately found "that the word 'issue' means 'lawful issue' as that term is defined by *Black's Law Dictionary*, i.e., descendants, including descendants more remote than children" governs. Consequently, the court concluded, "all eight of Sally Billy's children are entitled to share in the estate and that for any who are deceased, his or her respective one-eighth share shall have passed per stirpes to his or her descendants." [Op. p. 3.]

Feeling aggrieved, the Administratrix for the Estate filed her Notice of Appeal and a Petition for Stay Pending Appeal on September 13, 2016. Following transcription of lower court proceedings and the filing of briefs by all three counsel representing the respective interests of the three potential groups of heirs, this Court entertained oral arguments on February 8, 2018. Thereafter the case was submitted and this opinion and order now ensues.

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[1] The three groups would be: *(i)* those two children still living; *(ii)* those three children who had died before Sally Billy; and *(iii)* those children who had died since the death of Sally Billy. One of the children had died after Sally Billy but before the petition opening the estate: it was not always clear whether Appellant Administratrix was seeking to divide the estate between the two children still living [Appellant's Br. P. 9] or the children of the five children still living at the time of her death. [Appellant's Br. P. 11] In either event, Appellant argued that by either interpretation of CTC § 12-2-1. the wording the Tribal Council used was intended to disallow the children of those parents who predeceased Sally Billy to inherit or to be awarded any share of her estate by the court.

Arguments and Analysis

Nearly 23 years have now lapsed since the August 2, 1995 death of Sally Billy, leaving no will. It was not until more than 8 eight years after her death that one of her eight children, Lonie Comby, filed initial papers petitioning for Letters of Administration and her appointment as Estate Administratrix. The case thereafter remained dormant yet another eight years. Finally, in January of 2016, the attorney for the estate filed a request for a status hearing on the case. By that point the situation amongst heirs and prospective heirs had, as one attorney described it at oral argument, "become toxic" to the point that dissolution and distribution of the estate and its sale proceeds became incumbent. On February 3, 2016, the Hon. Judge Webb heard arguments to determine who should be lawful heirs in line for inheritance and what proportionate share each should be awarded.

At issue is the proper interpretation the second provision of CTC § 12-2-1's wording and intent in its formula for the division and distribution of the estates among surviving children or grandchildren of those who die without a will. The applicable wording in that second provision of CTC §12-2-1 governing Intestate Estates reads: "if the deceased shall have any living issue, then per stirpes among those living issue, with the root generation to be the children of the deceased...." *Id.* All counsel and the lower court judge found that particular wording to be confusing and seemingly using internally contradictory language to describe the formula to be used to divide and award the estate among the decedent's descendants.

Administratrix Lonie Comby first said only decedent's immediate children still living at the time of the hearing (being two) should share equally the estate. Appellant's second proposed alternative formula for division was to divide the estate among only those five children still living at the time of their mother's death, but for those of her three children who had died since her passing, their children (grandchildren to Sally Billy) should share their deceased parents' one-fifth share of the estate with any other siblings they might have.

The third option, and the one chosen by the lower court, was to award a one-eights interest each for all eight children born to the decedent, but that for all those children who had now died,

regardless of whether before or after their mother's death, their one-eighth interest was to pass on to their respective descendants per stirpes, meaning in equal shares with their other siblings, if any. It was from that basis of awarding estate interests that the appellant petitioner now appeals. We now examine her primary and fallback arguments.

Appellamt's Primary Position: The first Argument of Appellant's brief is that "If the traditions of the Mississippi Band of Choctaw Indians are applied to this case, the two remaining children still living would divide the estate property as they dictated with the eldest having the final decision-making power." Her brief states at page 9: "The Appellant argues that since she is ***one of the eldest remaining*** in the family that she should be allowed to distribute her mother's estate according to her own wishes." *Id.* (Italics and emphasis added.)[2] To that approach the Brief of Appellee Jamie Billy writes in opposition at page 5: "The appellant also argues that she and Nan Isaac are the only living heirs and that is correct that at this time they are the only two living heirs but at the time of the death of the decedent there were five living heirs and at the time of the opening of the estate there were four living heirs. The appellant wants this court to approve of their manipulation of the court system." *Id.*

We agree with the Appellee Jamie Billy's summary and reject Appellant's Proposition I argument. We hold CTC § 12-2-1's language "if the deceased shall have any living issue, then per stirpes among those living issue" neither means only the two presently living children of Sally Billy; also not the four living children at the time of the opening of the estate; nor the five living children at the time of decedent's death. Any one of those interpretations would leave passage by intestate succession susceptible, if carried to its logical extreme, to the potential of heirs not opening the estate until all decedent's other children but one have passed – in short, "sole survivor takes all." Appellant's rationale flies in the face of the fundamental purpose of probate succession, which is to promptly, and equitably, assign and distribute decedents' estates to their heirs rather than having them languish to disuse. Indeed, to that end the Tribal Council's

[2] We take Appellant's characterization as "one of the eldest remaining" when there are only two surviving children to actually mean she is not THE eldest remaining child. Under traditional practice, she would in practice have been the eldest having the final decision-making power.

passage of CTC § 12-2-1 provisionally and conditionally overrides in part tribal traditional division of estate property to protect against such outcomes.

Appellant's Secondary Position: Appellant's second assertion is: "The best plain, non-superfluous reading of Choctaw Tribal Code § 12-2-1 dictates that the Sally Billy Estate be divided among her children who were alive at the time of Sally Billy's death and their descendants, per stirpes. As such, the legal heirs of pre-deceased children would take no share at all." Appellant's brief also takes issue with the trial court opinion's conclusion at page 3 that "[t]he phrase 'with the root generation to be the children of the deceased' does not seem to be necessary considering the meaning of 'per stirpes.' Nevertheless, it seems to reinforce that a deceased child's original share will pass to his or her children."

Disagreeing with the court's conclusion that that phrase does not seem necessary, Appellant argues that conclusion violates one canon of statutory construction that says "that it is presumed that language in a statute is not superfluous." She argues that the Tribal Council purposefully put the phrase "root generation" into CTC § 12-2-1 in such a fashion that the inheritance stops at the level of living children. Appellant argues that the term "issue" may, and in this instance, should be interpreted to mean "children" only. Appellant writes: "In the context of wills and estates the third edition of Black's Law Dictionary under the paragraph 'In Real Law'" says that, "...issue may, in such a connection, be restricted to children, or to descendants living at the death of a testator, where such an intention clearly appears." See Black's Law Dictionary 3d Ed. (1933). Under this definition the term issue can be limited to children only," App. Br. P. 9. The bottom paragraph of Appellant's brief at page 11 pegs this argument on a definitional meaning of the term "stirpes" by itself, without the modifier "per" in order to force her conclusion that, "stirpes, by itself would mean the children of the deceased only." App. Br. P. 11. By omitting that word "per" before "stirpes" so as to support her analysis, she herself violates that very canon on which she pegs her criticism of the court's interpretative approach.

The flaws in Appellant's interpretation and reasoning are apparent. We have already noted and accept the analysis set forth in Appellee Jamie Billy's brief relating to this alternative. Furthermore, there is no such best plain, non-superfluous reading of CTC § 12-2-1 dictating

division of the estate among only her children who were alive at the time of Sally Billy's death and their descendants per stirpes.[3] Appellant's reading would lead to absurd results if carried to its logical extension. It also requires using a secondary, as opposed to the primary, definition from Black's Law Dictionary to reason "issue" is limited to mean decedent's children only. Her unsubstantiated claim that "stirpes, by itself, would mean only the children of the deceased is totally inapplicable, for it disregards that CTC § 12-2-1 expressly uses the two words "per stirpes" together and thus makes "issue" inclusive of children both living and descendants (such as grandchildren and great-grandchildren, if any there be) of decedent.

Guiding Rules of Statutory Interpretation: First, we follow the plain meaning rule and read the statute as a whole. The guiding principle in this case is the basic and unexceptional rule that courts must give effect to the clear meaning of statutes as written. See *Estate of Cowart v. Nicklos Drilling Co., 505 U.S. 469, 475. (1992).* Each statutory provision should be read by reference to the whole act. See *Nobelman v. American Sav. Bank, 508 U.S. 324, (1993)* The interpretation [of a section] is governed by the familiar principles that "'words grouped in a list should be given related meaning,' (citations omitted) and that "in expounding a statute, we [are] not ...guided by a single sentence or member of a sentence, but look to the provisions of the whole law and its object and policy. *Massachusetts v. Morash,* 490 U.S. 107, 114-115 (1989). (Internal citations omitted.) Further, we must avoid interpreting a provision in a way that would render other provisions of the Act superfluous or unnecessary, see *South Carolina v. Catawba Indian Tribe, Inc.,* 476 U.S. 498, 510 n.22 (1986). We must also avoid interpreting a provision in a way inconsistent with the policy of another provision, see, *United Sav. Ass'n v. Timbers of Inglewood Forest Assocs.,* 498 U.S. 365, 371 (1988); or from interpreting a provision in a way that is inconsistent with a necessary assumption of another provision, See *Gade v. National Solid Wastes Management Ass'n.,* 112 S.Ct. 2374,, 2384 (1992); and from interpreting a provision in a way that is inconsistent with the structure of the statute. See *Eli Lilly & Co. v. Medtronic, Inc.,* 496 U.S. 661, 668-669 (1980).

[3] The one expressed point of confluence of the court(s) and all counsel was in all their agreeing the statute was seemingly initially misleading, confusing, and initially appearing inherently internally contradictory.

Using these rules, the true intended meaning of that second provision in question becomes readily evident. The Intestate Succession statute, CTC § 12-2-1, in its entirety reads:

> All property passing under § 12-1-1(c) shall pass first to the spouse of the deceased if living; second, if the deceased shall have any living issue, then per stirpes among those living issue, with the root generation to be the children of the deceased; third, per capita to any living parents of the deceased; fourth, per capita to any living brothers and sisters of the deceased; fifth, to the next living next of kin as determined by the civil law method, but not to extend beyond the fifth generation.

Looking at the entire CTC § 12-2-1 statutory scheme and their sequence of application gives full rise to the statute's intended order of distribution. First, passage to the spouse of the deceased is self-evident as a priority. Second in consideration addresses children of the deceased with the referencing terms including "living issue," "per stirpes" and "root generation" in its wording (which shall be contextually explained below). Children, grandchildren, great-grandchildren of the deceased are referred to as "descendants." Third in line would be awards "per capita to any living parents of the deceased" and those persons are termed at law as "ancestors" or "ascendants." Fourth in the statutory scheme would be distributions per capita to any living brothers and sisters of the deceased, and those relatives are categorized as "collateral" in the most immediate generational blood degree to decedent. Fifth, and last in line to inherit if no one of the prior four categories were still living, would be division of the estate per capita amongst the next living next of kin as determined by the civil law method, but not to extend beyond the fifth generation.[4]

Understanding of this entire statutory hierarchy of succession also shows the absurdity of Appellant's proposition that only the children living at the time of decedent's death entitles them, or their children per stirpes if those surviving at the death of decedent have since died, should

[4] A descriptive charting of Degrees of Kinship By the Rules of Civil Law may be found at www.heirbase.com.

inherit while the other grandchildren whose parents predeceased decedent should be excluded from sharing in the estate becomes obvious. Appellant's argued position(s) would mean that the excluded grandchildren's default placement by taking into consideration all five provisions of CTC § 12-2-1 under her proposed scheme of intestate succession would potentially put those grandchildren behind any living parent(s) of the deceased, behind any living brother(s) and sister(s) of the deceased, and technically they would not even be classified as collateral kin to receive in any place as collateral depicted by the civil law chart of kinship if appellant would have her way. It would be inane to impute such an intention to the Tribal Council's word-crafting of that second provision of CTC § 12-2-1. We decline to do so.

We next examine that second, contested provision's word choice "if the deceased shall have any living issue, then per stirpes among those living issue, with the root generation to be the children of the deceased" in order to delve its true meaning and its underlying intent. Most confusion and misunderstanding stems from inabilities to settle on precise definitions of key words and phrases, as well as a propensity to augment or discard language attendant to terms at law. These are what led to improbabilities of squaring their meaning to other terminologies endemic to words' ancient common law origins and definitions. The meaning of words "issue," "per stirpes," "root generation" and, contextually, "living issue" all seemed largely uniformly problematic, but "issue" was the most troublesome. In common vernacular, the word "issue" generally is interpreted as children, but when used technically in probate law, it has varied, particularized meanings. The court's opinion noted that the term "issue" was not defined, so it instead borrowed the term "lawful issue" to nonetheless reach its proper conclusion as to how the estate should properly be divided and awarded.[5]

The premiere authoritative source definition for "issue" actually comes from the Uniform Probate Code (1969), Article I, Part 2, Definitions § 1-201 General Definitions at §1-201(24) wherein it states that "Issue" of an individual means descendant. It also comports with the Degrees of Kinship by the Rules of Civil Law Chart that lists a child, grandchild, and great grandchild, etc. categorically as each being "Issue / Descendant." Therefore, CTC § 12-2-1's

[5] Indeed, not one of the counsel in the four briefs filed was able of produce an authoritative definition of "issue" apart from some form of modifier such a "legal" or "lawful."

second provision worded "if the deceased shall have any living issue" can refer either to children or grandchildren, depending on the circumstances. The balance of § 12-2-1's second provision can therefore be read as a unit: "then per stirpes among those living issue, with the root generation to be the children of the deceased" and descriptive (and inclusive) of either of the two posited scenarios. If "living issue" is applicable as a reference to a living child of the decedent, then per stirpes (or in equal shares) with the total number of all other siblings, whether they be living or deceased, would be inclusive of all decedent's descendants. However, where "living issue" is applicable as a reference to a living child or children of a predeceased sibling to the decedent, the estate term "taking by representation" describes that latter circumstance.

Defining the children of the deceased as the "root generation" ensures that if there be any of that generation (decedent's sons and daughters) who might have predeceased the decedent, but leaving no children of their own, then the per stirpes distribution to the living heirs would be reduced to a smaller number of distributes, with each receiving a bigger proportion (fraction) comprised of whatever the remaining number of decedent's children survived the decedent and that number of decedent's children predeceased leaving living issue of their own who would then taking by representation is the manner described immediately above.

CONCLUSION

Having covered all the above arguments, definitions, and explanations hereinabove, this Court looks last to our case situation before us and the opinion and ruling of the lower court. Doing so, we find the distribution and award pronounced in Judge Webb's August 17, 2016 Memorandum and Order exactly correct in its determination that all eight of Sally Billy's children are entitled to share in her estate and that for any and all who are now deceased, their respective one-eighth share passes per stirpes to eaches' descendants.

Accordingly, we affirm the decision of the lower court, lift the stay in this matter and remand the case for further proceedings in conformity with the lower court's August 17, 2016 Memorandum and Order.

So ordered, this the 16th day of January, 2019.

Chief Justice

Associate Justice

Associate Justice

CERTIFICATE OF SERVICE

I, do hereby certify that I have this, the 16th day of January, 2019 caused to be forwarded by electronic mail, United States mail and/or hand delivered, a true and correct copy of the above and foregoing document to the below listed counsel of record.

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