Law Office of Erin Olson, P.C.

May 8, 2019

2014 NE Broadway Street
Portland OR 97232-1511

Phone: 503-546-3150
Fax: 503-548-4435
E-mail: eolson@erinolsonlaw.com
Website: www.erinolsonlaw.com

House Committee on Judiciary
Oregon State Capitol
900 Court Street NE, RM 331
Salem, OR 97301

Re: Senate Bill 474 (Forfeiture of Parent's Right to Inherit From, or Recover for, Wrongful Death of a Deserted or Neglected Child

Dear Chair Williamson and Members of the Committee:

I am an attorney in private practice in Portland, and I represent and advocate for crime victims, many of whom are children. My motivation to request the changes that are before you in SB 474 came from the tragic deaths of two teenaged girls, Jeanette Maples and Gloria Joya.

Jeanette Maples died at age 15 as a result of horrific torture and abuse by her mother, who is presently the only woman on Oregon's death row, and her stepfather, who is serving a 25-years-to-life prison sentence. A lawsuit filed as a result of Jeanette's death was settled in 2012 for $1.5 million. Jeanette's mother and stepfather were disqualified from receiving any of the settlement by the Slayer and Abuser Statute, ORS 112.455 *et seq.*, which prevents persons who kill or abuse others from inheriting from their victims. That left Jeanette's biological father as the only beneficiary of the settlement, and he became a millionaire as a result of Jeanette's death. He had not seen Jeanette in a decade or more, and had spent much of her early childhood in prison. Jeanette's siblings received nothing.

Gloria Joya died at age 16 from an anxiety-induced impacted bowel while in stranger foster care. A lawsuit filed as a result of Gloria's death was settled for $1.25 million. Gloria's biological parents were both substance abusers whose chaotic lifestyle and neglect resulted in Gloria's foster care placement. However, they did not qualify as "abusers" under Oregon's Slayer and Abuser statute, ORS 112.455 *et seq.*, because neither had been convicted of a felony crime of abuse, so the only law that could arguably be used to disqualify them from receiving the net proceeds of the settlement was the parental forfeiture law.

The parental forfeiture law presently requires the filing of a petition for forfeiture by someone who would benefit from the forfeiture – usually the other parent of the decedent, a sibling of the decedent, or a grandparent of the decedent – and that the petitioner prove by clear and convincing evidence that one or both parents had either willfully deserted the decedent for her life or for the 10-year period preceding her death, or that they had "neglected without just and sufficient cause to provide proper care and maintenance" for the decedent for her life or for the 10 year period preceding her death. The appellate courts have set high standards for what constitutes "willful desertion" and "neglecting without just and sufficient cause to provide proper care and maintenance," both of which phrases are derived from provisions of the adoption laws.

Proving by clear and convincing evidence that Gloria's parents had both willfully deserted or neglected her for the 10 years prior to her death would have been challenging since both parents had at least some contact with Gloria in the ten years prior to her death and her father had a mental illness during part of that time which arguably prevented him from "willfully" doing anything, including abandoning or neglecting Gloria. Additionally, even if one of the parents was disqualified, that parent's share would not have gone to Gloria's siblings, it would have gone to the other parent, who would then take everything.

Gloria had four minor siblings when she died, three of whom had suffered some of the same parental neglect and abuse that Gloria suffered. The four guardians *ad litem* appointed by the probate court to represent the interests of Gloria's siblings were able to negotiate a settlement with Gloria's parents that essentially resulted in a six-way split of the funds recovered in the lawsuit, but the guardians *ad litem*, one of whom I represented, felt that any amount paid to Gloria's parents was unjust, and that the settlement should have been split among Gloria's four siblings. Had SB 474 been in force, I am confident Gloria's siblings would have been successful in their forfeiture petition.

Senate Bill 474 would make four important changes to the existing parental forfeiture laws, ORS 112.047-112.049:

(1) Sections 4 and 6 would reduce the period of abandonment or neglect required for forfeiture from ten years to one year. If a child can be adopted without the consent of a parent if that parent has deserted or neglected the child for one year prior to the filing of the adoption petition, no longer period of desertion or neglect should be required to terminate their financial interest in a child's death.

(2) Section 5 would reduce the burden of proof for parental forfeiture from "clear and convincing" to a "preponderance of evidence." Inheritance is a financial interest created by statute, not a constitutional right. Financial interests are generally governed by the preponderance standard.

(3) Sections 1-3 would extend the parental forfeiture provisions to wrongful death claims. The current law only expressly applies to property that passes by intestate succession, and the proceeds of wrongful death claims are distributed per the wrongful death statutes, not the laws of intestate succession. To illustrate why this matters, in the lawsuit brought by the personal representative of Gloria Joya's estate, there was both a "survival claim" and a "wrongful death" claim. The "survival claim" alleged abuse to Gloria during her life that hurt Gloria but did not cause her death (*i.e.* the claim "survived" Gloria's death – *see* ORS 30.075(1)). The wrongful death claim alleged neglect of Gloria that resulted in her death (ORS 30.020(1)). The forfeiture statute as it is presently written only explicitly applies to the survival claim since that is the only "property that would pass by intestate succession," and not to the proceeds of the wrongful death claim because such a claim is

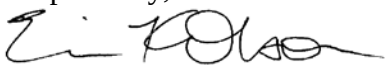
brought not for the benefit of the intestate heirs, but for the benefit of specifically-enumerated relatives.[1]

(4) Sections 3 and 5 would give the persons who would benefit from a successful petition for forfeiture up to one year from the decedent's death if that person did not receive notice that a probate estate had been opened. This is necessary because in cases in which a decedent's siblings or grandparents are the potential beneficiaries of a wrongful death claim, they may not be notified when a probate estate is opened unless they have already asserted a claim under ORS 112.047.[2] Additionally, House Bill 3006 and House Bill 3008 from this session will exempt certain estates from notice requirements.

Decisions about who should inherit property if someone dies without a will and decisions about who should financially benefit from a wrongful death claim are made by the legislature because they are public policy decisions. I urge you to pass SB 474 so the public policy of this state is clear: parents who neglect or abandon a child for a year or more will not benefit financially from that child's death.

I have attached some questions and answers that may arise as you consider this bill.

Respectfully,



Erin K. Olson

---

[1] Additionally, while stepparents cannot inherit from their stepchildren under the laws of intestate succession, they are beneficiaries of wrongful death claims. ORS 112.015–112.045; ORS 30.020(1). A stepparent should not benefit from the wrongful death of a stepchild they did not support if ORS 108.045 obligated them to support the child.

[2] ORS 113.145(1) lists the persons who must be notified of a decedent's estate, and they are generally those known to have an interest in the estate and those who claim to have an interest in the estate.

Questions and Answers

1. What do "willful desertion" and "neglect without just and sufficient cause" mean?

The legislative history of ORS 112.047-112.049 (*see infra*) indicates the terms come from ORS 109.324(3):

> "In determining whether the parent has willfully deserted the child or neglected without just and sufficient cause to provide proper care and maintenance for the child, the court may:
>
> (a) Disregard incidental visitations, communications and contributions; and
>
> (b) Consider, among other factors the court finds relevant, whether the custodial parent has attempted, without good cause shown, to prevent or to impede contact between the child and the parent whose parental rights would be terminated in an action under this section."

ORS 109.324(3).

The Oregon Supreme Court has engaged in the following discussions of what "willful neglect" per ORS 109.324(3) means:

> "[D]id the * * * parent wilfully fail to manifest substantial expressions of concern which show that the parent has a deliberate, intentional, and good faith interest in maintaining a parent-child relationship? All relevant evidence demonstrating the presence or absence of wilful neglect may be considered by the court. The court, however, may disregard incidental visitations, communications, and contributions. * * * The ultimate decision must be based on the totality of the evidence."

Eder v. West, 312 Or 244, 266 (1991).

The following categories of evidence are relevant to such an analysis: (1) payment of money to support the child; (2) gifts to the child; (3) visits with the child; (4) telephone calls to the child; (5) cards or letters to the child; and (6) other expressions of concern for the child. *Stubbs v. Weathersby*, 320 Or 620, 635-636 (1995).

2. What do other states do?

Other states have analogous laws to Oregon's parental forfeiture law:

North Carolina's law states:

> "Any parent who has wilfully abandoned the care and maintenance of his or her child shall lose all right to intestate succession in any part of the child's estate and all right to administer the estate of the child, except –

(1) Where the abandoning parent resumed its care and maintenance at least one year prior to the death of the child and continued the same until its death; or

(2) Where a parent has been deprived of the custody of his or her child under an order of a court of competent jurisdiction and the parent has substantially complied with all orders of the court requiring contribution to the support of the child. (1961, c. 210, s. 1.)"

N.C. Gen. Stat. § 31A-2.

Vermont's wrongful death statute includes:

"(4) No share of the damages or recovery shall be allowed in the estate of a child to a parent who has neglected or refused to provide for the child during infancy or who has abandoned the child whether or not the child dies during infancy, unless the parental duties have been subsequently and continuously resumed until the death of the child."

14 V.S.A. § 1492(4).

Indiana's wrongful death statutes provide in relevant part as follows regarding damages awarded for any wrongful death claim:

"(f) A parent or child who wishes to recover damages under this section has the burden of proving that the parent or child had a genuine, substantial, and ongoing relationship with the adult person before the parent or child may recover damages."

Ind. Code. § 34-23-1-2(f).

Another part of Indiana's wrongful death statutes that applies to claims arising from the injury or death of a child states that damages do not "inure to the benefit of:

(1) the father and mother jointly if both parents had custody of the child;

(2) the custodial parent, or custodial grandparent, and the noncustodial parent of the deceased child as apportioned by the court according to their respective losses; or

(3) a custodial grandparent of the child if the child was not survived by a parent entitled to benefit under this section.

However, a parent or grandparent who abandoned a deceased child while the child was alive is not entitled to any recovery under this chapter."

Ind. Code. Ann. § 34-23-2-1(i).

Other states' laws are modeled on § 2-114 (c) of the Uniform Probate Code, which states that "Inheritance from or through a child by either natural parent or his [or her] kindred is precluded unless that natural parent has openly treated the child as his [or hers], and has not refused to support the child." *See generally*, P. Monopoli, *"Deadbeat Dads": Should Support and Inheritance Be Linked?*, 49 U. Miami L. Rev. 257 (Winter 1994); A. Stemler, *Parents Who Abandon or Fail to Support Their Children and Apportionment of Wrongful Death Damages*, 27 J. Fam. L. 871 (1988), E. Short, *Parent's Desertion, Abandonment, or Failure to Support Minor Child as Affecting Right or Measure of Recovery for Wrongful Death of Child*, 53 ALR3d 566.

3. What is the legislative history of ORS 112.047-112.049?

ORS 112.047 and ORS 112.049 were enacted by the Oregon Legislature in 2005 as House Bill 3352. The origins of the bill were concerns brought forward by a constituent of Rep. Tom Butler. The constituent's child had been brain damaged at the age of three and subsequently abandoned by his father. The child had obtained a modest settlement as a result of the brain injury, and the constituent-mother had then stayed home to raise and care for the child for 33 years. She was concerned that the child's father would be entitled to half the child's estate if the child died despite having not seen or supported the child for all of those 33 years. In describing the legislation to the House Committee on Judiciary Subcommittee on Civil Law, Chair Bob Ackerman noted that "unless this loophole is closed, a deadbeat dad could inherit half the child's estate, and the entire estate in certain circumstances, and we're trying to plug that hole."

The final language in HB 3352 concerning willful desertion and neglect without just and sufficient cause to provide proper care and maintenance came from ORS 109.324. The discussions among the legislators indicated that appellate cases applying the language from ORS 109.324 would guide the courts in the application of the new law.