COURT OF APPEALS
DECISION
DATED AND FILED

July 14, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP2789 **Cir. Ct. No. 2006PR35**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN RE THE ESTATE OF ANGELLIKA ARNDT:

MICHAEL MARTINEZ,

APPELLANT,

V.

DONNA PAVLIK,

RESPONDENT.

APPEAL from an order of the circuit court for Rusk County: FREDERICK A. HENDERSON, Judge. *Reversed and cause remanded with directions.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 HOOVER, P.J. Michael Martinez appeals an order denying his petition for determination of heirship of the Estate of Angellika Arndt, his

granddaughter. The circuit court concluded Martinez was not an heir because Angellika's parents' parental rights had been terminated. Martinez argues his right to intestate inheritance survived unless and until Angellika was adopted. We agree with Martinez and reverse and remand for the circuit court to grant Martinez's petition and to enter findings consistent with this decision.

BACKGROUND

¶2 Seven-year-old Angellika died from injuries inflicted at a day treatment facility after the termination of her parents' rights.[1] Upon the termination of parental rights, Angellika's guardianship was transferred to Milwaukee County, which then placed her in foster care. It was while in foster care that her injuries and death occurred. Angellika had two minor siblings, both of whom were adopted prior to Angellika's death.

¶3 Martinez filed a petition for proof of heirship seeking to demonstrate he and Angellika's other grandparents were first in the line of intestate succession. The circuit court refused to hear the petition because it had previously determined Martinez was not an heir and, therefore, concluded he had no standing to file the petition.[2] In its initial decision, the court concluded Martinez's rights to inheritance ceased when his daughter's parental rights to Angellika were terminated.

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[1] Martinez asserts Angellika's estate may have a tort claim against the facility.

[2] Martinez attempted to appeal the court's initial determination that he was not an heir. The court made that determination when deciding who would administer the estate. We dismissed that appeal in ***Martinez v. Pavlik***, Nos. 2006AP2384, 2006AP2385, unpublished slip op. (Wis. Ct. App. Sept. 5, 2007). Following a motion for reconsideration, we also determined Martinez's heirship claim would not subsequently be precluded by either claim or issue preclusion. ***Id.***, *reconsideration denied* (Sept. 19, 2007).

DISCUSSION

¶4 The question presented in this case is whether a termination of parental rights severs the grandparents' right to intestate inheritance where the deceased child was not adopted. Based on the plain language of WIS. STAT. § 48.43(2) (2003)[3] and the holding in ***Pamanet v. Pamanet***, 46 Wis. 2d 514, 175 N.W.2d 234 (1970), we conclude the intestate succession scheme survives a termination of parental rights until adoption.

¶5 The relevant facts in ***Pamanet*** were similar to the facts here, except that there were surviving siblings who had not been adopted following the termination of parental rights. ***Id.*** at 518, 519 (citing per curiam on motion for rehearing). Our supreme court concluded the parents' rights to inheritance were terminated along with all of their other parental rights, but that those siblings who had not been adopted were the deceased child's "heirs at law." ***Id.*** at 516, 518-19. The court further concluded that the siblings born after the termination of parental rights were also the intestate child's heirs. ***Id.*** at 516, 519.

¶6 ***Pamanet*** was primarily concerned with whether the parents' inheritance rights survived. The court based its ruling on the plain language of the statute, stating it was "'all rights of parents' that are terminated, not just some of them." ***Id.*** at 516 (quoting WIS. STAT. § 48.40 (1969-70)). However, by

[3] Angellika's parents' parental rights were terminated in 2003. The language of WIS. STAT. § 48.43(2) was significantly revised in 2006, but applies only to termination orders granted after the revision. *See* 2005 Wis. Act 232, §§ 22, 55(2)(a). Following the revision, the termination of parental rights statute now includes a termination of all rights "between the child and all persons whose relationship to the child is derived through that parent [with two exceptions]." WIS. STAT. § 48.43(2) (2007-08). Thus, the holding of this case may have limited prospective application.

concluding the siblings were "heirs at law" and stating the sibling inheritance was "the result required by the law," the court implicitly concluded that *only* the parents' intestate inheritance rights were extinguished. ***Id.*** at 518. Indeed, the plain language of the statutes, at all times relevant, refers to termination of only the parents' rights:

> "Termination of parental rights" means that, pursuant to a court order, all rights, powers, privileges, immunities, duties and obligations existing between parent and child are permanently severed.

WIS. STAT. § 48.40(2) (2003-04).

> An order terminating parental rights permanently severs all legal rights and duties between the parent and the child.

WIS. STAT. § 48.43(2) (2003-04).

¶7 While the termination of parental rights statute refers only to the legal relationship with the parents, the adoption statutes explicitly recognize the termination of the intestate inheritance scheme as to the entire birth family upon adoption. Thus, under ***Pamanet*** and WIS. STAT. §§ 48.92 and 854.20,[4] the intestate inheritance relationship between the child and the birth grandparents survives until adoption. *See* ***Pamanet***, 46 Wis. 2d at 518 n.4, 519. The only difference in the application of the intestate inheritance scheme between this case and ***Pamanet*** is that it proceeds one step further here because both of Angellika's

[4] The language of WIS. STAT. § 854.20 is substantially similar in both the 2003-04 and 2007-08 versions. However, Martinez relies on WIS. STAT. § 48.92 regarding the effect of adoption. That citation and argument is misleading because the statute was revised by the same legislation that revised the termination of parental rights statute. *See* 2005 Wis. Act 232, § 31. Martinez's brief does not indicate which version he is citing, but the language is from the revised version, which includes the new language referring to "all persons whose relationship to the adopted person is derived through those birth parents." Regardless, both versions of § 48.92(3) refer to § 854.20, which includes in each version "children, issue, or relatives," in addition to parents.

minor siblings were adopted prior to her death. The intestate inheritance order is spouse, child, parent, sibling, and then grandparent. *See* WIS. STAT. § 852.01 (2007-08).

¶8 Donna Pavlik, the administrator of Angellika's estate, cites a number of "grandparents' rights" cases in support of her argument that a termination of parental rights terminates all grandparents' rights as well. None of those cases, however, concerned intestate inheritance or cited ***Pamanet***. Pavlik also argues ***Pamanet*** does not apply because it involved siblings rather than grandparents. This is a distinction without a difference. It is evident ***Pamanet*** relied on the intestate succession scheme to conclude the non-adopted siblings were the deceased child's heirs. The only reasonable interpretation of ***Pamanet*** is that, prior to adoption, and exclusive of the parents, the birth relatives next in succession inherit.

By the Court.—Order reversed and cause remanded with directions.

Not recommended for publication in the official reports.