

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
CIVIL TRIAL DIVISION

<u>PATRICIA WILLIAMS, Administratrix of the</u>	:	October Term 2000
<u>Estate of JOSHUA CALEB WALKER,</u>	:	No. 001873
<u>DECEASED</u>	:	
	:	
	:	
v.	:	
	:	
<u>ATLANTIC EXPRESS INC. of PA and JEAN L.</u>	:	
<u>JOSEPH</u>	:	

OPINION

O'KEEFE, ADM. J.

July 20, 2005

The question presented for this court is whether two siblings who were adopted out of the family prior to their sibling's death maintained their intestate right of inheritance from their sibling's estate. This question has been decided in the affirmative based on a fact bound inquiry into the nature of the two siblings' post adoption family relationship with the decedent which demonstrated that the siblings maintained the requisite family relationship pursuant to Section 20 Pa.C.S. § 2108 to take as siblings under intestacy pursuant to 20 Pa.C.S. § 2103(3).

Facts and Procedural History

The deceased was a four year old child named Joshua Caleb Walker ("Joshua"), born to Connie Walker and Barry L. McIntosh in 1995<sup>1</sup>. The deceased had four natural siblings: LaTisha Renee Walker-Williams ("LaTisha"), Marcquis Aaron Walker-Williams ("Marcquis"), Daniel Walker ("Daniel"), and Brianna Knight ("Brianna") (N.T. 3/15/05, 10-11, 16-17). The family unit was fractured; Barry L. McIntosh<sup>2</sup> predeceased Joshua (N.T. 3/15/05, 10-11) and Connie Walker had her parental rights terminated<sup>3</sup> in 1998 because she was unable to take care of the children (N.T. 3/15/05, 19). Thereafter, LaTisha and Marquis were in foster care with Patricia Williams and then adopted by her on August 20, 1999 (N.T. 3/15/05, 18); Patricia Williams' parents had raised Connie

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<sup>1</sup> The birth certificate evidencing Joshua's birth on June 19, 1995 was made part of the record.

<sup>2</sup> The death certificate evidencing Barry L. McIntosh's death on May 9, 1998 was made part of the record.

<sup>3</sup> See Ex, 3, 4, 5, and 6 of "Petition to Settle" bearing Control Number 092468 which contained therein the copies of the Decrees terminating parental rights to Joshua, Brianna, Marcquis, and LaTisha.

Walker when Connie was a foster child placed in Patricia Williams' family's care (N.T. 3/15/05, 15). Daniel lived with Connie's sister, Denise, (N.T. 3/15/05, 17) and later was placed in the custody of City of Philadelphia Department of Human Services ("DHS")<sup>4</sup>. Patricia Williams was also taking care of her parents who were living with her, and she was working full-time outside of the home. With regard to Brianna and Joshua, "[w]e tried to keep them together as a family to let them know that they did have brothers and sisters" (N.T. 3/15/05, 17), but it was not possible for her to adopt all of the children because she "would have had to stop working" (N.T. 3/15/05, 18). The two youngest, Brianna<sup>5</sup> and Joshua went into foster care with Julia Knight and remained in that capacity until the untimely death of Joshua (N.T. 3/15/05, 18). Thus, at the time of Joshua's death, he was survived by two siblings, LaTisha and Marcquis who had recently been adopted "out" and by two siblings who had not been adopted, Daniel and Brianna.

Joshua was struck and killed by a bus on January 13, 2000. Patricia Williams was appointed as administratrix of the Estate of Joshua Caleb Walker by the Register of Wills of Philadelphia County pursuant to a decree dated October 3, 2000. On behalf of the Estate, Ms. Williams brought suit for damages against the defendants on a negligence theory of recovery. The case was mediated and settled for One Million, Six Hundred Thousand Dollars. The administratrix, Ms. Williams, through her attorney, Mr. Richard P. Haaz, filed a petition for leave of court to approve the settlement and proposed distribution in equal shares to decedent's four siblings, identified above.

At the time the petition was presented, three of the potential heirs were minors: Marcquis, Daniel and Brianna. LaTisha however, was a sui juris potential beneficiary. On November 4, 2004, the Court appointed Guardian *ad litem* for the minors: Marie K. Parrott, Esquire for Marcquis, Daniel L. Glennon, Esquire for Daniel, and James M. Tyler for Brianna. Additionally, James F. Mannion, Esquire was appointed Trustee *ad litem* on behalf of Barry McIntosh. On January 11, 2005 the Court issued an Order and *inter alia*, ordered proper service on Patricia Williams, LaTisha Renee Walker-Williams and Connie Walker. Hearing on this matter took place on March 15, 2005; thereafter, on

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<sup>4</sup> Daniel did not share the family celebrations and phone calls (N.T. 3/15/05, 46-47) but his status as an intestate beneficiary was neither dependent upon this nor contested because he was never adopted. (N.T. 3/15/05, 51-52) Thus, the provisions of 20 Pa.C.S. § 2108 do not apply.

<sup>5</sup> Brianna was adopted by Julia Knight on November 3, 2002, after the death of Joshua, thus her status as an intestate heir has not been challenged and similar to Daniel, 20 Pa.C.S. § 2108 does not apply.

March 30, 2005 the Court approved the uncontested gross settlement, attorney fees and reasonable costs.

At the March 15, 2005 hearing, the Court took evidence to assist in its determination of the proper distribution of the Estate of Joshua Caleb Walker, deceased. When questioned by the Court, Ms. Connie Walker did not object to the proposed distribution to the four remaining siblings (N.T. 3/15/05, 9). The trustee *ad litem* appointed for the decedent's father, Barry L. McIntosh similarly did not object; he presented a certified copy of the death certificate of Barry L. McIntosh indicating that he had predeceased the decedent. Counsel stated "Mr. McIntosh does not have any interest nor does his estate have any interest in the proceedings today." (N.T. 3/15/05, 11).<sup>6</sup>

Counsel for Petitioner requested that a one-quarter share of the proceeds be awarded to each surviving sibling, counsel for Marcquis requested a one-quarter share for Marquis (N.T. 3/15/05, 12), and counsel for Daniel and Brianna demanded strict proof of the family relationship between the two prior adopted siblings and short of that proof, requested a fifty percent share for their wards (N.T. 3/5/05, 13-14). Briefs were Ordered and submitted, with the *ad litem* for Daniel and Brianna denying that a family relationship existed for LaTisha and Marcquis and requesting a fifty-percent distribution for their wards, respectively. The *ad litem* for Marcquis requested a twenty-five percent share of proceeds based upon the family relationship being maintained.

Thus, the sole issue to be decided was Petitioner's request to distribute Survival Action proceeds to the *four* surviving siblings: LaTisha, Marcquis, Daniel and Brianna, when *two* siblings, LaTisha and Marcquis had been adopted on August 20, 1999, approximately four and one-half months prior to the death of Joshua.

#### Discussion

Section 20 Pa.C.S. § 2108 governs the instant case. It provides:

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<sup>6</sup> The class of siblings stood to take the decedent's estate pursuant to 20 Pa.C.S. § 2103(3) as the natural mother had her parental rights terminated (and she did not contest the proposed distribution to the four siblings), the natural father pre-deceased the decedent, and the decedent had no issue.

For purposes of inheritance by, from and through an adopted person he shall be considered the issue of his adopting parent or parents. An adopted person shall not be considered as continuing to be the child or issue of his natural parents **except in distributing the estate of a natural kin**, other than the natural parent, who has **maintained a family relationship** with the adopted person. If a natural parent shall have married the adopting parent, the adopted person for purposes of inheritance by, from and through him shall also be considered the issue of such natural parent.

20 Pa.C.S. § 2108 (2004)(emphasis added).

Thus, an adopted person is not excepted from inheriting from his natural kin who has maintained a family relationship with the adopted person. The siblings at issue, namely LaTisha and Marcquis, are natural kin in that they share a blood relationship with and are descended from the same mother as the decedent, Joshua. The question then turns on whether a *family relationship* was maintained by Joshua with the two prior adopted siblings. A review of case precedent in Pennsylvania reveals nothing to define this or guide the Court in determining the family relationship. The Court conducted a lengthy fact bound inquiry and a thorough analysis of the testimony regarding the family relationship and thereafter determined that there was ample credible, uncontroverted testimony from four witnesses that a family relationship was maintained between the siblings at issue, LaTisha and Marcquis, and the decedent during the four and one-half months following their adoption and the death of Joshua.

Petitioner, Patricia Williams affirmed the family relationship shared by LaTisha and Marcquis with Joshua in the year preceding Joshua's death. She testified that they stayed in touch, called on the phone and visited with Joshua and Brianna in their foster home as well as in Ms. Williams' home, and that they had befriended Julia Knight, the foster mother to Joshua and Brianna (N.T. 3/15/05, 20). Ms. Williams testified "even though they couldn't be in the same house we did want them to know who each other were to know that they did have other family and that, you know, they would be well aware of one another as sisters and brothers" and that "we would call them at least once a month or once every other month, and we would see them" (N.T. 3/15/05, 20). This follows:

Q. And did Marcquis and LaTisha ever phone Brianna and Joshua and speak to them?

A. Yes, they would, they would call and say, We need a call, and we would get on the phone and call and say, You know, I'm here, I am your sister, I am your brother and how are you doing?

Q. Would they regularly refer to Joshua and Brianna as their brother and sister?

A. Yes, there are. They still do.

(N.T. 3/15/05, 20, 21).

The siblings celebrated Christmas together just prior to Joshua's death. Ms. Williams testified that Julia Knight, Joshua's foster mother, brought Joshua and Brianna to Ms. Williams' home where "we spent time and we gave them presents and it was just good to see them" (N.T. 3/15/05, 22). Ms. Williams purchased presents for Joshua and put her children's name on them. (N.T. 3/15/05, 22). Furthermore, the siblings "would sit and talk or they would play. Tisha was older so she would do all the hugging and sit there and talk to them" (N.T. 3/15/05, 22).

Ms. Williams continued to described telephonic contact wherein she, "Tisha and Marcquis would talk to them" (N.T. 3/15/05, 23).

On cross examination by the *ad litem* representing Marcquis, Ms. Williams confirmed that "parental transportation" was required for the children to get together because "the children didn't really take public transportation until much later", and that as a practical matter, the adults arranged the contacts (N.T. 3/15/05, 25). Visits were friendly when she took LaTisha and Marcquis to Ms. Knight's house to visit Brianna and Joshua, and when Ms. Knight brought the children to visit at the Williams' household to see Marcquis and LaTisha. (N.T. 3/15/05, 25). "There was never any time where there wasn't any communication." (N.T. 3/15/05, 25). Cross examination by the *ad litem* representing Brianna confirmed the lack of an independent method of visiting between the children. Ms. Williams testified that "you couldn't walk there, you would have to take public transportation" to get from her house to Julia's house and that it was "ten minutes away" by car. (N.T. 3/15/05, 27-28). Importantly, it is established that in the four and one-half months between the adoption of LaTisha and Marcquis and the death of

Joshua, the children were dependent on adults to arrange their visits and facilitate transportation and were thus any one of them was unable to visit independently or more frequently than could be arranged by the adults with whom they resided.

Upon further cross examination by the *ad litem* representing Brianna, Ms. Williams testified that LaTisha and Marcquis visited with Joshua and Brianna in their foster home “once a month, maybe once every two months” and that phone calls were made to them “maybe once a month, once every two months” and that “we used to try to keep in touch with them at least once a month if not more” (N.T. 3/15/05, 28). Further, “we would call them because the kids would know it’s their birthday” (N.T. 3/15/05, 29).

Finally, in a line of questioning on cross examination by the *ad litem* representing Daniel, Ms. Williams confirmed that a cousin relationship existed between the children of Denise, a biological sister (N.T. 3/15/05, 17) of Connie Walker and the children of Connie Walker. (N.T. 3/15/05, 30).

Q. Would they refer to—would Connie’s children refer to Denise’s children through mutual contacts as just like my brothers and sisters?

A. Denise’s children are they cousins.  
(N.T. 3/15/05, 30).

The court finds that although a cousin relationship was thus acknowledged between the children of Connie Walker and Denise, her biological sister, this cousin relationship does not alter in any way or impact the sibling relationship shared by the natural born children of Ms. Connie Walker.

Redirected, Ms. Williams testified that she, Marcquis and LaTisha all attended Joshua’s funeral and that Joshua’s death was “very hard” on LaTisha and Marcquis, it “was a process of getting them through” his death and they were “very much” upset (N.T. 3/15/05, 31).

The Court finds that Ms. Williams has described a loving and caring sibling relationship that flourished under difficult circumstances that were beyond the ability of LaTisha, Marcquis and Joshua to alter; the siblings did their best to stay connected and indeed did stay connected through phone calls expressing love for each other, visits and gifts. This Court acknowledges that despite the fact the children were unable to control

their physical relationships, their sibling relationship nevertheless grew by telephonic communication and despite the decedent being a mere toddler.

LaTisha's testimony confirmed her concern for her brother's situation and the firm family relationship she enjoyed with her brother.

A. Before his passing, Pat would take me and my brother over to see Joshua and Brianna to visit. I personally and a couple of times went just to see Ms. Knight and Brianna and Joshua just to get a feel of how they were living over there. And I spent a lot of time over there with her just to establish a strong relationship with Ms. Knight and my brother and sister. Birthdays we would call, Christmas they came over, things like that.

Q. And did you consider Joshua your brother?

A. Yes.

(N.T. 3/15/05, 34).

LaTisha testified that Joshua was "very comfortable around her brother and I", they were "very aware of who we are", we "exchange[d] gifts, we played, hugged and kissed each other." (N.T. 3/15/05, 35). Furthermore, although LaTisha was aware of her adoption, she testified "nothing changed whatsoever" in terms of her relationship with her brother as a consequence of her adoption and the adoption decree represented "a piece of paper, no relationship change." (N.T. 3/15/05, 35). On cross examination by the *ad litem* for Brianna, LaTisha testified they spent other holidays together, "4<sup>th</sup> of July" and that "we always did call and spoke to them on birthdays, but sometimes we just weren't able to make it" over (N.T. 3/15/05, 36).

The Court finds through these sentiments and visits LaTisha maintained her sibling family relationship with the decedent and that the decedent was the recipient of his sister's love. Accordingly, the decedent maintained a family relationship with LaTisha.

Similarly, Marcquis testified they "would go over there, play with him, we would hug and kiss, and we would have conversations" and that he played "action figures or something" during these visits and that during phone calls, he would "just tell him we loved him and that- yeah, pretty much loved him"(N.T. 3/15/05, 40). Marcquis felt "a lot of hurt, a lot of sadness, I thought that—I was asking why did that happen to my brother,

didn't know why it happened, I was crying a lot" in response to news of Joshua's death. (N.T. 3/15/05, 40). Asked by his *ad litem* whether he still missed Joshua, Marcquis replied "[y]es." (N.T. 3/15/05, 41).

The Court finds Marcquis demonstrated love and concern, and visited the decedent and played with him and in so doing, the family relationship was maintained. His acute sorrow and sense of loss upon Joshua's death further demonstrated the connection between the two.

The fourth witness was Julia Knight, the foster mother for Joshua and Brianna at the time of his death. Joshua was placed in her care when he was nine months old (N.T. 3/15/05, 44), thus she is in a position to either support or refute the testimony that was given regarding the relationship Joshua enjoyed with LaTisha and Marcquis. She supported their testimony that they visited and stated the visits occurred "at least four times before his passing" and confirmed that they called "[l]ike it was told, once a month, twice a month." (N.T. 3/15/05, 44-45). She elaborated upon the visits and the relationship between the siblings, describing the visits as follows:

A. Christmas twice, 4<sup>th</sup> of July once because LaTisha came over and we had a cookout, you know. We went over Pat's house a few times, like twice. So four times<sup>7</sup>.

(N.T. 3/15/05, 45).

Further, Ms. Knight confirmed the Christmas gifts given Joshua by LaTisha and Marcquis during the holiday celebration shared by the siblings at Ms. Williams' home just weeks prior to Joshua's death, and the "happy time" and "hugs and kisses" given and received by Joshua and his siblings. (N.T. 3/15/05, 49).

Q. And wouldn't you agree that when brothers and sisters are hugging each other and kissing each other that that would be consistent with maintaining a family relationship and that's how family members act towards each other?

A. It's love, as love you say family relationship.

(N.T. 3/15/05, 50-51).

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<sup>7</sup> Not that the numerical count of visits is outcome determinative, 20 Pa.C.S. § 2108, nevertheless the Court counts five visits.



The Court finds Ms. Knight described not only five visits, but also a consistent pattern of phone calls and furthermore her awareness of the loving bond between the siblings, notwithstanding the very young age of Joshua. She was embraced by Joshua's siblings LaTisha and Marcquis as well as by their adoptive mother; consequently there was easy and continual access to the decedent. Her testimony supports that of the other three witnesses that a family relationship existed between the prior adopted siblings and the decedent.

#### Conclusion

Based on its fact bound inquiry into the relationship the two prior adopted siblings shared with the decedent, the Court determined that the texture of the relationship constituted that of a family relationship and that emotional ties between the two prior adopted children and the decedent persisted past their adoption. Minors when they were adopted, the two prior adopted children used the tools at their disposal, namely the telephone, pre-arranged visits, and gift-giving to cement their bond with the decedent prior to his death in a regular, continuous manner. As such, the two prior adopted children are proper intestate heirs, and the four siblings take as a class of siblings. Accordingly, the Court approved Petitioner's request to distribute Survival Action proceeds equally to the four surviving sibling heirs of the decedent.

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O'KEEFE, ADM. J.