

MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

Law Docket No. Cum-23-342

IN RE ESTATE OF ALICIN ELAINE DAGGETT

ON APPEAL FROM THE CUMBERLAND COUNTY PROBATE COURT

BRIEF FOR APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTRODUCTION 1

STATEMENT OF FACTS..... 2

PROCEDURAL HISTORY..... 2

STATEMENT OF ISSUES..... 3

SUMMARY OF ARGUMENT 3

ARGUMENT 5

I. THE PROBATE COURT ERRED AS A MATTER OF LAW
WHEN IT APPLIED TITLE 18-A INSTEAD OF TITLE
18-C TO ALICIN’S ESTATE 5

 A. Standard of Review 6

 B. Title 18-C: The Maine Uniform Probate Code..... 6

 C. The Application of 18-A M.R.S.A. § 2-109(1)..... 10

 D. *Estate of Jacobs* 13

 E. The Consent and Decree 14

II. THE PROBATE COURT ERRED IN FINDING THAT
18-A M.R.S.A. § 2-109(1) PRESERVED AMBER’S ABILITY
TO INHERIT FROM ALICIN..... 17

 A. Standard of Review 17

 B. The MUPC’s Adoption Exceptions..... 20

 C. The MUPC Should Be Given Effect 22

CONCLUSION 26

CERTIFICATE OF SERVICE..... 27

TABLE OF AUTHORITIES

FEDERAL CASES

Jefferson v. Fink, 247 U.S. 288 (1918) 18

MAINE CASES

Appeal of Latham, 124 Me. 120, 126 A. 626 (1924)..... 8, 11

Bank of America, NA v. Cloutier, 2013 ME 17, 61 A.3d 1242..... 9

Clark v. Clark, 2019 ME 158, 219 A.3d 1020..... 17, 19

Cobb v. Board of Counseling Prof.’s Licensure, 2006 ME 48, 896 A.
2d 271..... 9

Connary v. Shea, 2020 ME 44, 259 A.3d 118 7, 11

Estate of Baril, 1997 ME 142, 697 A.2d 270 11, 13

Estate of Brideau, 458 A.2d 745 (Me. 1983)..... 12, 13

Estate of Cabatit v. Canders, 2014 ME 133, 105 A.3d 439..... 17

Estate of Calden, 1998 ME 140, 712 A.2d 522 12, 13

Estate of Jacobs, 1998 ME 233, 719 A.2d 523..... 5, 11, 13, 14, 20

In Re Crowell’s Estate, 124 Me. 71, 126 A. 178 (1924)..... 11, 14

In re Elva T. Williams, 154 Me. 88, 144 A.2d 116 (Me. 1958).....
..... 8, 10, 11, 18

In re Estate of Hatch, 2020 ME 46, 229 A.3d 166 6

In re Estate of Reed, 2016 ME 90, 142 A.3d 578..... 6

New England Trust Co. v. Sanger, 151 Me. 295, 118 A.2d 760 (1955)
..... 14

Scribner v. Barry, 489 A.2d 8 (Me. 1985) 12, 13

CASES FROM OTHER JURISDICTIONS

Estate of Hart, 165 Cal. App. 3d 392 (1984)..... 20

In re Estate of Gallegos, 2021 CA 115, 499 P.3d 1058 19

In re Estate of LaBelle, 26 N.Y.S 3d 445 (2016) 19

In re Wiltermood’s Estate, 78 Wn.2d 238, 472 P.2d 536 (1970) 19

Matter of Estate of Ryan, 187 Ariz. 311, 928 P.2d 735 (1996)..... 18

MAINE STATUTES

18-A M.R.S.A. § 2-109(1)5, 10, 13, 16, 17, 19, 22, 25

18-A M.R.S.A. § 2-203(2) 24

18-A M.R.S.A. § 8-401(A)..... 10

18-A M.R.S.A. § 8-401(B)(6)..... 7

18-C M.R.S.A, § 1-201(5)..... 26

18-C M.R.S.A. § 1-201(9)..... 26

18-C M.R.S.A. § 2-102(1)(B)..... 24

18-C M.R.S.A. § 2-103(1)(A)..... 26

18-C M.R.S.A. § 2-115..... 5, 16, 26

18-C M.R.S.A. § 2-117..... 4-7, 9, 16, 21-23, 26

18-C M.R.S.A. § 2-203(2) 24

18-C M.R.S.A. § 3-101 19

18-C M.R.S. § 8-301 6, 7, 10, 11

18-C M.R.S.A. § 8-301(1).....	21
18-C M.R.S.A. § 8-301(2).....	21
18-C M.R.S.A. § 8-301(2)(A-1).....	21
18-C M.R.S.A. § 8-301(2)(B).....	25
18-C M.R.S.A. § 8-301(2)(D)	18
18-C M.R.S.A. § 8-301(2)(F).....	4, 6, 20, 21
18-C M.R.S.A. § 9-105.....	4-6, 9, 16, 23
18-C M.R.S.A. § 9-308(6)(A).....	4-6, 9, 16, 23
19 M.R.S.A. § 535	22

OTHER AUTHORITIES

<i>Black’s Law Dictionary</i> 1842 (11 th ed. 2019)	19
<i>Maine Probate Law Revision Commission, Report of the Commission’s Study and Recommendations Concerning Maine Probate Law (1978)</i>	20,21
Unif. Probate Code art. II, pt. I, general cmt., 8 U.L.A. pt.I at 34 (Supp. 2011)	23

INTRODUCTION

The issue on appeal is whether an adopted child has the right to inherit from a non-adoptive parent's intestate estate. The Personal Representative of his mother's Estate challenges the Probate Court's decision to apply the intestacy statute effective at the time of adoption in 1992 rather than current probate law to this 2022 estate.

STATEMENT OF FACTS

By agreement with the parties and order of the Probate Court, this matter was decided upon stipulated facts. (A-36.) Appellant Matthew Daggett [Matthew] is the adult child of the decedent, Alicin Elaine Daggett [Alicin]. (A-6.)

PROCEDURAL HISTORY

Matthew was appointed Personal Representative of the Estate of Alicin E. Daggett (“Estate”) on July 26, 2022. (A-1.) As Personal Representative, he filed a Petition for Order of Complete Settlement on March 3, 2023, seeking approval of a proposed plan of distribution; an order to settle, distribute, and close the Estate; and an order discharging Matthew from future claims and demands. (A-12.) The proposed plan provided for the remaining Estate assets to be distributed to Matthew. (A-15.) In response, Amber Hanson [Amber] sought supervised administration of the Estate and objected to the proposed plan of distribution. (A-10, A-16.)

Matthew and Amber filed stipulated facts on May 19, 2023 (A-36) along with two 1992 adoption documents: the Consent of Non-Petitioning Parent (A-18) and the Decree of Adoption (A-20). Amber filed a Memorandum of Law on June 2, 2023 (A-21). Matthew filed his Response on June 8, 2023. (A-25.) Amber filed a Responsive Memorandum of Law on July 18, 2023. (A-34.)

The Probate Court issued its Decision and Order on August 18, 2023. (A-6.) Matthew timely appealed September 9, 2023. (A-2.)

STATEMENT OF ISSUES

- I. DID THE PROBATE COURT ERR WHEN IT APPLIED TITLE 18-A INSTEAD OF TITLE 18-C TO ALICIN'S ESTATE?

- II. DID THE PROBATE COURT ERR IN FINDING THAT 18-A M.R.S.A. § 2-109(1) PRESERVED AMBER'S ABILITY TO INHERIT FROM ALICIN DESPITE ITS REPEAL AND THE CONTRARY PROVISIONS OF TITLE 18-C?

ARGUMENT SUMMARY

Alicin died intestate in 2021. Amber has no statutory right to inherit from Alicin under the Maine Uniform Probate Code [MUPC]. Matthew avers that he is Alicin's sole descendant and that all elements of the MUPC should apply to the administration of his mother's Estate. Matthew further argues that any statutory ability to inherit that Amber had in 1992 was not preserved when the prior probate code was repealed and that her adoption decree contains no special entry for inheritance rights such that she is not entitled to inherit.

The intestacy statute in effect at the time of Alicin's death provides that an adopted child "may inherit from the adoptee's former parents if so provided in the adoption decree." 18-C M.R.S.A. § 2-117 (2023). The provisions of section 2-117 are echoed in the MUPC's adoption provisions, sections 9-105 and 9-308(6)(A), and referenced in its effective date, section 8-301(2)(F).

Matthew argues that the administration of the Estate should be governed by the MUPC and that the Probate Court erred as a matter of law in finding that Amber's statutory ability to inherit in 1992 should be given effect despite current probate law.

ARGUMENT

I. THE PROBATE COURT ERRED AS A MATTER OF LAW WHEN IT APPLIED TITLE 18-A INSTEAD OF TITLE 18-C TO ALICIN'S ESTATE.

Title 18-C, the MUPC, does not provide a statutory right to an adopted child to inherit from a non-adoptive parent's intestate estate.¹ The prior probate code, Title 18-A, included an exception by which stepparent adoptees retained inheritance rights from non-adoptive parents. 18-A M.R.S.A. § 2-109(1), repealed by P.L. 2017, ch. 402, § A-1 (effective Sept. 1, 2019) (Hereinafter "Section 2-109(1)").²

The Probate Court cited three factors in concluding that "it is clear under [S]ection 2-109(1) that Amber inherits by intestacy" The Probate Court primarily relied on Section 2-109(1)'s being in effect at the time Amber was adopted. The Probate Court also relied on *Estate of Jacobs*, a 1998, Title 18-A estate case. *Estate of Jacobs*, 1998 ME 233, 719 A.2d 523. Finally, the Probate Court relied on

¹ See both the MUPC's intestate succession provisions: 18-C M.R.S.A. §§ 2-115 and 2-117, and the MUPC's Adoption Act provisions: §§ 9-105 and 9-308(6)(A).

² There is no section 2-109(1) in the MUPC. 18-C M.R.S. § 2-109 concerns debts to a decedent and has no subsection.

Amber’s 1992 adoption documents: the Consent of Non-Petitioning Parent (“Consent”) and the Decree of Adoption (“Decree”).

A. Standard of review

The Probate Court’s application of the law to stipulated facts is reviewed de novo upon appeal. *In re Estate of Hatch*, 2020 ME 46, ¶ 9, 229 A.3d 166 (citations omitted). Similarly, the Probate Court’s interpretation of the probate statute is a question of law subject to de novo review. *In re Estate of Reed*, 2016 ME 90, ¶ 6, 142 A.3d 578.

B. Title 18-C: The Maine Uniform Probate Code

The MUPC took effect September 1, 2019. 18-C M.R.S.A. § 8-301 (2023). In both its intestacy and adoption provisions, the MUPC divests an adoptee of inheritance rights unless such rights are provided in the adoption decree. 18-C M.R.S.A. § 2-117, 9-105, 9-308(6)(A). The MUPC expressly excepts stepparent adoptions before 1981 from its intestacy provisions. *Id.* § 8-301(2)(F).

Amber was adopted in 1992 and thus is not entitled to this exception under a plain reading of the statute. The intent of the MUPC

to limit the intestacy exception to pre-1981 stepparent adoptions is reiterated by its legislative history. Section 8-301(2)(F) originally excepted stepparent adoptions up to its enactment date, but was amended to except only stepparent adoptions prior to 1980: “For an adoption decree entered before ~~September 1, 2019~~ January 1, 1981 and not amended after ~~September 1, 2019~~ January 1, 1981, the child is the child of both the former and adopting parents for purposes of intestate succession, notwithstanding section 2-117, unless the decree provides otherwise.” *Id.*, as amended by P.L. 2019, ch. 417, Pt. A, § 103 (effective June 16, 2020 but applied retroactively to Sept. 1, 2019.)³ Title 18-A provided the same exception to its January 1, 1981 effective date for stepparent adoptions prior to 1981. *See* 18-A M.R.S.A. § 8-401(b)(6), repealed by P.L. 2017, ch. 402, § A-1 (effective Sept. 1, 2019).

The MUPC generally applies to estates of decedents who die after its effective date. *Id.* § 8-301; *Connary v. Shea*, 2021 ME 44, ¶ 23, 259 A.3d 118. “The law is settled in this state that the right to

³ Pursuant to P.L. 2019, ch. 598, § 12.

inherit property from or by an adopted person is determined by the law of descent in effect at the time of death of the intestate.” *In re Elva T. Williams*, 154 Me. 88, 91, 144 A.2d 116 (Me. 1958). An adoption decree “does not settle for all time the child’s right to inherit property. That remains as in the case of all persons subject to legislative regulation, until it becomes vested by the death of him whose estate may be subject to administration.” *Id.* 92 (citing *Appeal of Latham*, 124 Me. 120, 126 A. 626 (1924)). “The rights of descent flow from the legal status of the parties, and, where the status is fixed, the law supplies the rules of descent, with reference to the situation as it existed at the death of the decedent.” *Id.* 122 (finding that a child adopted in 1860, when the adoption statutes did not provide for inheritance from a natural parent, had intestacy rights upon the natural parent’s death in 1922 due to an amendment in force at the time.)

The Probate Court’s failure to apply the MUPC to the intestacy issues in this Estate is contrary to the intent of the MUPC and its explicit exception for only pre-1981 stepparent adoptees. “The cardinal rule of statutory interpretation is to give effect to the intention of the legislature.”

Cobb v. Bd. of Counseling Prof.'s Licensure, 2006 ME 48, ¶ 11, 896 A.2d 271. The intent of the MUPC's intestacy and adoption provisions may be discerned from "the plain meaning of the statute and the context of the statutory scheme." *Id.* "All words in a statute are to be given meaning and none are to be treated as surplusage if they can be reasonably construed." *Id.* "If the statute's meaning is unambiguous, and not illegal or absurd, the meaning controls, and we do not look beyond its words." *Bank of America, NA v. Cloutier*, 2013 ME 17, ¶ 12, 61 A.3d 1242.

The MUPC provides for a stepparent adoptee's inheritance rights only when such rights are granted by the adoption court in the adoption decree. §§ 2-117, 9-105, 9-308(6)(A). In concert, these provisions are unambiguous. Their plain meaning is to require the Probate Court to look to Amber's Adoption Decree and determine whether it provides for her to inherit from Alicin. Matthew avers that the Decree does not contain a provision granting inheritance rights to Amber and should not be read to do so.

C. The Application of 18-A M.R.S.A. § 2-109(1)

Section 2-109(1), regarding intestate succession at the time of Amber's adoption, provided that

An adopted person is the child of an adopting parent and not of the natural parents except that an adopted child inherits from the natural parents and their respective kin if the adoption decree so provides, and except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either natural parent. If a natural parent wishes an adopted child to inherit from the natural parents and their respective kin, the adoption decree must provide for that status. 18-A M.R.S.A. § 2-109(1).

Section 2-109(1) took effect January 1, 1981 and was repealed September 1, 2019.⁴ Matthew challenges the application of a repealed exception to the administration of his mother's Estate.

Adoption is a statutory creation subject to legislative regulation and change. *Williams*, 154 Me. 90. Similarly, intestate succession is not a natural or immutable right; it is an expectation upon later death. *Id.* Any ability Amber had to inherit from Alicin in 1992 was a result of Section 2-109(1). Section 2-109(1) was repealed while Alicin

⁴ 18-A M.R.S. § 8-401(a); 18-C M.R.S. § 8-301. Note that Title 18-A included Section 2-109(1) in its Article 2, Part 1 (Intestate Succession), which contained no subparts. Title 18-C, Article 2, Part 1 retains the title "Intestate Succession", but is divided into "Subpart 1: General Provisions" (18-C M.R.S. § 2-101 to 2-113) and "Subpart 2: Parent-Child Relationship" (18-C M.R.S. § 2-115 to 2-118).

was living. Intestate inheritance cannot vest until there is a decedent and an estate to administer. Thereafter, estate administration is subject to the laws effective at the time of the decedent's date of death. *Connary*, 2021 ME ¶ 23; *Williams*, 154 Me. 91; *Latham*, 124 Me. 122.

Because Alicin died in 2021, the MUPC applies to her Estate. “The succession to and distribution of personal property is regulated . . . by the law of the domicile of the decedent in force at the time of his death.” *Jacobs*, 1998 ME ¶ 4, n.1 (quoting *In Re Crowell's Estate*, 124 Me. 71, 73, 126 A. 178 (1924)). See also 18-C M.R.S. § 8-301.

This Court has consistently ought to honor the legislature's work by applying current laws to current estates despite differences between past and current probate provisions. Enactment dates are a “general mandate” to apply the new law and should be respected especially when the new law is in contradiction to the old. *Estate of Baril*, 1997 ME 142, ¶ 6, 697 A.2d 270. The *Baril* Court read the effective date of Title 18-A to apply to the pre-Title 18-A will of a decedent who died pre-Title 18-A and whose estate was commenced pre-Title 18A. *Id.* In applying the probate law effective at the time of a pending probate petition, the *Baril* Court

rejected the application of a repealed law “the result of which is to nullify the provisions [of the enacted law] that expressly apply to these proceedings.” *Id.* ¶ 8. In another estate, this Court found that the law in effect at the time of the testatrix’s date of death applied to construe her will, despite the fact that the law at the time her will was written would have resulted in a different outcome. *Estate of Calden*, 1998 ME 140, ¶ 6, 712 A.2d 522.⁵ Similarly, this Court found that a will executed before the enactment of Title 18-A was nonetheless governed by it because the testator died after the enactment date. *Scribner v. Barry*, 489 A.2d 8, 9 (Me. 1985). Title 18-A was applied to the administration of a 1983 estate regarding payment of attorney fees because applying the prior law, which was repealed after the decedent’s death but before the estate’s administration, would have subverted the intent of Title 18-A. *Estate of Brideau*, 458 A.2d 745, 747 (Me. 1983). In applying the newly enacted Title 18-A retroactively, the *Brideau* court noted the “clear legislative

⁵ Ms. Calden’s will included a devise to her stepson or his heirs. Her will was executed pre-Title 18-A, at a time the definition of heirs did not include surviving spouses, but Title 18-A’s definition of heirs to include surviving spouses was applied to the administration of her estate. *Id.* at ¶ 7, n.2.

expression” of Title 18-A should apply to estates administered after its enactment. *Id.*

In the instant case, the MUPC was enacted nearly two years before Alicin’s death. Pursuant to the reasoning of the *Baril*, *Calden*, *Scribner*, and *Brideau* Courts, because Alicin was living at the time the MUPC took effect, she accordingly had the opportunity to execute a Will or amend Amber’s adoption decree to address the impact of the MUPC. Similarly, Amber could have sought to amend her adoption decree but did not.

D. Estate of Jacobs

While the *Jacobs* Court found that Section 2-109(1) preserved an adoptee’s right to inherit, it did so in 1998 when Title 18-A was in effect. *Id.* ¶ 2. In fact, the *Jacobs* Court applied Title 18-A to a Pre-Title 18-A adoption.⁶ The *Jacobs* “parties agree that section 2-109 of the Maine Probate Code governs the dispute at bar.” *Id.* ¶ 4, n. 1. Title 18-A applied, of course, because the decedent was a Maine resident who

⁶The year of the adopted child’s birth was 1970 and he was adopted before his second birthday, but no adoption date or state are given. The *Jacobs* Court does state that the adoptive child was born in New Hampshire. *Id.* ¶ 2.

died in 1995 when Title 18-A was in effect. Amber's reliance on *Jacobs* is misplaced.

Jacobs suggests that the MUPC should apply to Alicin's Estate: "It is well settled that the status of the adopted child is fixed by the law of the adoption but the adopted child's rights of inheritance shall be determined by the law of the state of inheritance" and "[t]he succession to and distribution of personal property is regulated . . . by the law of the domicile of the decedent in force at the time of his death." *Id.* (quoting *New England Trust Co. v. Sanger*, 151 Me. 295, 304, 118 A.2d 760 (1955) and *In Re Crowell's Estate*, 124 Me. 71, 73, 126 A.2d 178 (1924)).

E. The Consent and Decree

The Consent, a standard probate form⁷, certified that Alicin was aware of and consented to the pending adoption petition and by so doing "will have surrendered and released all of my parental rights." A-18. The fifth of seven provisions states: "I understand that unless one of the adopting parents is the other natural parent of the adopted child, the adopted child will lose its legal rights to inherit from me or

⁷M.R. Prb. P. Form A-7 (Feb. 1, 1984).

my kin at the time of this adoption unless the adoption decree specifies otherwise.” *Id.* The second page of the Consent included a statement that “[e]ven though neither of the petitioners is a natural parent of this child, I ask the court to place in the decree of adoption a special entry which will preserve to my child the right to inherit from me and my kin.” A-19. Neither of the provisions applied to Amber’s adoption.

The Decree, also a standard court form⁸, contains a similar provision: “If the adopting parent is not the spouse of a natural parent, this child shall lose her rights to inherit from her natural parents and their respective kin unless otherwise provided here: _____[blank].” A-20. This provision also did not apply to the circumstances of Amber’s adoption.

Neither the Consent nor the Decree include a special entry granting inheritance rights to Amber. The import of the Consent in 1992 was the termination of Alicin’s parental rights, subject to Section 2-190(1). The import of the Consent in 2022 is that Alicin is no longer Amber’s parent for any purpose, including intestacy,

⁸ M.R. Prb. P. Form A-3 (Feb. 1, 1984).

pursuant to 18-C M.R.S. §§ 2-115, 2-117, 9-105, and 9-308(6)(A).

The Decree should not be read as a court order granting an inheritance right to Amber. The space regarding inheritance on the Decree was left blank. Although the Consent requested “a special entry which will preserve [Amber’s] right to inherit from me and my kin”, there is no such special entry.

The Decree’s failure to include an affirmative right to inherit had no effect in 1992 because Amber had a statutory right to intestacy status at that time. Indeed, the Probate Court below opined that no special entry was necessary.⁹ But mere surplusage in 1992 became a legal requirement with the enactment of the MUPC.

Amber’s argument that the Decree should be read to grant her inheritance rights is in direct conflict with section 2-117, which provides that Amber “may inherit [from Alicin] if so provided in the adoption decree.” *Id.* Alicin’s signature regarding irrelevant boilerplate is not a court order of inheritance. Section 2-117 looks only to the Decree, not to the parties’ intentions or the circumstances surrounding the adoption.

⁹ “The fact that there was no language in the decree which mirrored the language in Title 18-C section 8-302(1)(B) [sic] is irrelevant because of the effect of then Title 18-A section 2-109(1). The Court’s language was mere surplusage.” A-37.

Perhaps the Decree does not contain a grant of inheritance rights because Alicin communicated another preference to the probate judge. Perhaps the probate judge observed some dynamic in the courtroom and chose not to include a special entry in the Decree. We cannot know the probate judge's reasoning these thirty plus years later, and do not need to. Under section 2-117, because Amber's adoption decree does not include a grant of inheritance rights, such rights cannot legally exist.

II. THE PROBATE COURT ERRED IN FINDING THAT 18-A M.R.S.A. § 2-109(1) PRESERVED AMBER'S ABILITY TO INHERIT FROM ALICIN.

A. Standard of Review

“We interpret the Probate Code de novo as a question of law.” *Clark v. Clark*, 2019 ME 158, ¶ 7, 219 A.3d 1020 (citing *Estate of Cabatit v. Candors*, 2014 ME 133, ¶ 11, 105 A.3d 439.) The “plain language and intent of Maine's Probate Code” should be given effect. *Id.* ¶ 8.

The Probate Court found that Amber's right to inherit from Alicin was “established” in 1992 and preserved from effect by the

MUPC under its section 8-301(2)(D).¹⁰ A-38. This section provides, in relevant part, that “[a]n act done before September 1, 2019 in any proceeding and any accrued right is not impaired by this Code.” *Id.* § 8-301(2)(D).

This finding was an error of law. Inheritance rights for adoptees are determined by the law at the time of an estate’s administration or date of death of an intestate, not date of the adoption. *Williams*, 154 Me. 91. The application of intestacy statutes in effect at the time of death is well established. “Changes in inheritance laws are effective as to any unvested inheritance right.” *Matter of Estate of Ryan*, 187 Ariz. 311, 313, 928 P.2d 735 (1996) (citing *Jefferson v. Fink*, 247 U.S. 288, 294 (1918).) “More importantly, the right to inherit by intestate succession does not vest until the decedent’s death.” *Ryan*, 187 Ariz. at 313 (in which the court granted inheritance rights to the adopted child from a non-adoptive parent because, although no such rights existed at the time of the adoption, a statute providing for such rights was enacted by the time that the non-adoptive parent died.) An

¹⁰ Incorrectly cited as 18-C MRS § 9-308(2)(D); the Probate Court quotes section 8-301(2)(D).

adoptee divested by statute of the right to inherit upon her adoption by her grandparents in 1991 gained the right to inherit upon the death of her biological father in 2016 because of an amendment in Colorado's intestacy statute providing for her intestate succession. *In re Estate of Gallegos*, 2021 COA 115, 499 P.3d 1058. See also *In re Estate of LaBelle*, 26 N.Y.S 3d 445 (2016), *In re Wiltermood's Estate*, 78 Wn. 2d 238, 472 P.2d 536 (1970).

While Amber had a statutory ability to inherit from Alicin while Section 2-109(1) was in force, Amber did not acquire any right to inherit from Alicin in 1992 because Alicin was still living. An accrued right is a "matured right; a right that is ripe for enforcement (as through litigation)." *Black's Law Dictionary* 1842 (11th ed. 2019.) The MUPC provides that "[u]pon the death of a person, the person's real and personal property devolves . . . to the person's heirs . . . [subject] to administration." 18-C M.R.S.A. § 3-101. Even vested title rights are conditioned upon the administration of an estate. *Clark v. Clark*, 2019 ME 158, ¶ 8, 219 A. 3d 1020. In the instant case, for example, Alicin could have been married at the time of her death such that her

estate could have passed to her surviving spouse.¹¹ Alicin could have died in another state such that her estate would have been subject to that state's perhaps contrary intestacy laws. *See Jacobs*, 1998 ME ¶ 4, n.1. *See also Estate of Hart*, 165 Cal. App. 3d 392 (1984) (involving an Oklahoma adoption, a California decedent, and real property in Colorado, in which Colorado law applied to find no intestacy rights for the adoptee.)

B. The MUPC's Adoption Exceptions

The MUPC addresses the transition regarding the loss of inheritance rights for stepparent adoptees in section 8-301(2)(F) by excepting such adoptions before 1981. Just as the MUPC otherwise dissolved the former ability of stepparent adoptees to inherit from non-adoptive parents, Title 18-A also 'disinherited' adoptees by changing the prior code's intestacy provisions. *See Maine Probate*

¹¹ Further questions arise if Amber maintains a right to inherit from Alicin's kin. Part of the reason that the laws of intestacy were changed to disinherit adoptees was because of difficulties involving confidentiality and determining and locating adoptees in regard to the estates of non-adoptive parents. *See Maine Probate Law Revision Commission, Report of the Commission's Study and Recommendations Concerning Maine Probate Law*, 38 (1978).

Law Revision Commission, Report of the Commission's Study and Recommendations Concerning Maine Probate Law, 38-40 (1978) (discussing the public policy reasons for providing for adoptees to inherit from adoptive parents and not from non-adoptive parents.)

The Probate Court also cites section 8-301(2)(A-1) as providing an apparent exception to the application of the MUPC to intestacy provisions affecting adoptees:

The intestate succession provision of Article 2, Part 1, Subpart 1, the elective share provisions of Article 2, Part 2, the exempt property and allowance provisions of Article 2, Part 4, and the wrongful death provision of section 2-807 apply to the estate of decedents who die on or after the effective date. *Id.*

While this section does not reference section 2-117, it should not be read to exempt it from the MUPC's effect. Its plain meaning is that the listed provisions apply to decedents who died on September 1, 2019 or after. Moreover, the MUPC's Adoption Act is not exempted under Section 8-301(2) save for its limits to post-1980 adoptions. § 8-301(2)(F). The MUPC's general effective date thus applies to section 2-117, pursuant to section 8-301(1).

C. The MUPC Should Be Given Effect

Section 2-117 reflects an evolution of adoption and intestacy law in Maine. Before 1981, Title 19 provided for adoptees to inherit from both their adoptive and non-adoptive parents.¹² In 1981, Title 18-A, reflecting the philosophy that an adopted child became fully the child of the adoptive parents, provided for adoptees to inherit from their adoptive parents but not from non-adoptive parents.¹³ Section 2-109(1) was Title 18-A's exception to the new disinheritance-upon-adoption rule for stepparent adoptions. This exception was to "address those situations where such inheritance would seem appropriate and where the preservation of confidentiality would not be important." 18-A M.R.S.A. § 2-109(1) cmt. to former § 535 (1979).

With the MUPC, Maine intestacy law completed a transition to the default of disinheritance from non-adoptive parents, leaving the maintenance of inheritance rights to the discretion of the adoption judge.

¹² 19 M.R.S.A. § 535, repealed by P.L. 1979, ch. 540, § 1 (effective Jan. 1, 1981). Section 535 allowed for adoptees to not inherit from adoptive parents if provided in the adoption decree.

¹³ 18-A M.R.S.A. § 2-109, repealed by P.L. 2017, ch. 402, A-1 (effective Sept. 1, 2019). Section 2-109 allowed for adoptees to inherit from non-adoptive parents if provided in the adoption decree.

18-C M.R.S.A. §§ 2-117, 9-105, 9-308(6)(A). Enacted well before Alicin's death, it should be given effect for her Estate.

Intestacy law is the legislature's best guess at a decedent's wishes. "The pre-1990 [Uniform Probate Code's] basic pattern of intestate succession, contained in Part 1, was designed to provide suitable rules for the person of modest means who relies on the estate plan provided by law. The 1990 and 2008 revisions [to the Uniform Probate Code] were intended to further that purpose by fine tuning the various sections and bringing them closer into line with developing public policy and family relationships." Unif. Probate Code art II, pt. I, general cmt., 8 U.L.A. pt. I at 34 (Supp. 2011).

Amber's inability to inherit from Alicin due to the enactment of the MUPC is not an injustice to be remedied. It is an intended consequence of the most recent revision of Maine's probate laws. The MUPC also changed Maine's intestacy law regarding the potential inheritances of surviving spouses and mutual children such that a surviving spouse now is entitled to the entirety of such an estate. Mutual children of such a decedent thus lost their prior, potential intestate succession status. *See*

18-C M.R.S. § 2-102(1)(B).¹⁴ The MUPC changed the percentages of a surviving spouse's elective share, resulting in a potential gain for some surviving spouses but a potential loss by some heirs and devisees of their prior statutory two-thirds' share. See 18-C M.R.S.A. § 2-203(2) and 18-A M.R.S.A. § 2-203(2).¹⁵ While some stepparent adoptee's potential inheritances 'disappeared' on September 1, 2019, the MUPC also created a way for the children of a decedent to inherit more of a deceased parent's estate.¹⁶ In the end, the MUPC, as did Title 18-A before it, directs the Probate Court to apply the law at the date of death to an estate's administration. While the consequence may be the loss by some to inherit, it will result in the gain of inheritance for others. These adjustments are a result of the legislative process as it seeks to address changes in families and society over time.

¹⁴ In contrast, 18-A M.R.S.A. § 2-102(1)(B) allowed a surviving spouse the first \$50,000 and 50% of the intestate estate and 50% to their mutual descendants.

¹⁵ The MUPC revised a surviving spouse's elective share provisions from one-third to percentages ranging from three percent to one-half of marital property depending on the length of marriage.

¹⁶ This seems an equitable result as compared to a stepparent adoptee gaining inheritance rights from a stepparent while also maintaining inheritance rights from both biological parents, which results in adoptees having possible inheritance rights from three intestate decedents as compared with the usual two for children who were not adopted.

In its order, the Probate Court seemingly relies on section 8-301(2)(B)¹⁷ of the MUPC in applying the repealed Section 2-109(1) to the Estate. This section provides that:

The [MUPC] applies to any proceedings in court . . . commenced on or after the effective date *regardless of the time of the death of the decedent* except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of the infeasibility of application of the procedure of this Code. *Id.*

(emphasis added.) With its express mention of date of death, this exception seems designed to allow the probate court to apply Title 18-A procedures to estates of decedents who died before the MUPC was enacted. In the instant Estate, applying this exception to well-established probate practice serves no discernable interest of justice. As with prior probate codes, the MUPC applies to this Estate because it was in effect at the time of Alicin's death. The MUPC excepts pre-1981 adoptions and thus applies to Amber's 1992 adoption. The Probate Court made no findings in this matter to address what interests of justice are served by declining to apply the MUPC to this

¹⁷ The Decision and Order cites this section as 18-C M.R.S. § 8-302(1)(B); there is no section 8-302.

Estate. The MUPC was in effect well before Alicin's death, giving Alicin the opportunity to act if she wished to avoid the effects of the new law. Amber also had the opportunity to seek to amend her adoption decree once the MUPC took effect and so seek to remedy any perceived injustice but did not. The MUPC and probate case law dictate the application of the MUPC to this Estate. The Probate Court's failure to apply the MUPC is contrary to its purposes, without justification, and serves no interest of justice.

CONCLUSION

For the reasons stated above, this Court should vacate the order below and remand this Estate to the Probate Court for decision finding that Amber is not an heir entitled to inherit from the Estate of Alicin Elaine Daggett pursuant to 18-C M.R.S.A. §§ 2-115 and 2-117 and that Matthew is Alicin's sole descendant pursuant to 18-C M.R.S.A. §§ 1-201(5), 1-201(9), and 2-103(1)(A)(2023).

Respectfully submitted this 6th day of December 2023.

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CERTIFICATE OF SERVICE

I, Maryellen Sullivan, hereby certify that I have today, December 6, 2023, pursuant to M.R. App.P. 7A(i), served copies of the foregoing brief upon the Appellee through her counsel as listed below:

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