

**THE SUPREME JUDICIAL COURT OF THE STATE OF MAINE  
SITTING AS THE LAW COURT**

**LAW COURT DOCKET NO. CUM-23-342**

**In Re:**

**Estate of Alicin E. Daggett**

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**BRIEF OF APPELLEE  
AMBER HANSEN**

**ON APPEAL FROM THE CUMBERLAND COUNTY PROBATE COURT**

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## I. STATEMENT OF FACTS

Amber Lynn Hansen (“Amber”) was born on January 28, 1986, the natural child of Edward C. Hansen, Jr. (“Edward”) and Alicin Elaine Daggett (“Alicin”) in Portland, Maine. [A-36, ¶1] Edward, and his spouse, Rebecca A. Hansen, petitioned the Cumberland County Probate Court to adopt Amber on or about January 22, 1992 (the “Petition”). [A-36, ¶2] The adoption was granted, without objection, after Alicin signed a Consent of Non-Petitioning Parent on January 20, 1992, and again on January 27, 1992, a copy of which is found in the Appendix at A-18 (the “Consent”).

In Alicin’s Consent, she indicates that she understands that, “unless one of the adopting parents is the other natural parent of the adopted child, the adopted child will lose its legal right to inherit from me or my kin...” [A-18, ¶5] In Alicin’s signed Consent, under the heading “Optional Preservation of Inheritance Rights,” Alicin signed under a provision that reads, “Even 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]

The Decree of Amber’s Adoption by her father and step-mother was granted on January 27, 1992. [A-20] (“Decree”). Pursuant to the terms of Alicin’s signed consent, the Decree states that, “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...” *{emphasis added}* [A-20]

At the time the Decree was granted, Rebecca Hansen (the adopting parent) was still the spouse of Edward, Amber’s natural parent. [A-36, ¶8]

At the time the Decree was granted, the Maine Probate Code provided in section 2-109 (1) that, “An adopted person is the child of an adopting parent and not 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.” [A-37, ¶9] *{emphasis added}*

Alicin died on May 5, 2021, intestate. [A-37, ¶10]

The current Maine Probate Code<sup>1</sup>, effective September 1, 2019, in section 2-117 provides that, “An order granting an adoption divests the adoptee’s former parents of all legal rights, powers, privileges, immunities, duties and obligations concerning the adoptee, including the right to inherit from or through the adoptee. An adoptee, however, may inherit from the adoptee’s former parents if so provided in the adoption decree.” [A-37, ¶11] *{emphasis added}*

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<sup>1</sup> The current Maine Probate Code is contained in Title 18-C of the Maine Revised Statutes. The former Maine Probate Code was contained in Title 18-A.



18-C M.R.S. §9-108 specifies that for adoptions “The laws in effect on August 31, 2019 apply to proceedings for which any of the following occurred before September 1, 2019:

1. Consent. The filing of a consent;...or
  
5. Adoption petition: The filing of a petition for adoption.

Both the filing of the Consent and adoption Petition occurred before September 1, 2019.

18-C M.R.S. §8-301(2)(A-1) states that, “The intestate succession provisions of Article 2, Part 1, Subpart 1 {*emphasis added*}, the elective share provisions of Article 2, Part 2, the exempt property and allowances provisions of Article 2, Part 4 and the wrongful death provisions of section 2-807 apply to the estates of decedents who die on or after the effective date.” Absent from 8-301(2)(A-1) is Article 2, Part 1, Subpart 2, which contains section 2-117 above, as well as Article 9, governing adoptions. Additionally, 18-C M.R.S. §8-301(2)(D) provides that, “An act done before September 1, 2019 in any proceeding {*emphasis added*} and any accrued right is not impaired by this Code.

Based on the above, the Cumberland County Probate Court found that, “Prior section 2-109(1) established the right of Amber to inherit from her mother and nothing enacted subsequent thereto changed that in any way.” [A-5]

**STATEMENT OF ISSUE PRESENTED FOR REVIEW**

Was there competent evidence and law to support the Probate Court's finding and decision that Amber is entitled to inherit from her natural mother's estate?



## **SUMMARY OF ARGUMENT**

There was competent evidence and law to support the Probate Court's finding and decision that Amber is entitled to inherit from her natural mother's estate.

## STANDARD OF REVIEW

“Statutory interpretation is a matter of law, and we review the trial court’s decision de novo. When interpreting a statute, we look first to its plain meaning and seek to give effect to the intent of the Legislature, construing the statutory language to avoid absurd, illogical, or inconsistent results. *Estate of Jacobs*, 1998 ME 233, ¶4, 719 A.2d 523 citing *Guardianship of Zachary Z.*, 677 A.2d 550,552 (Me. 1996) and *Nasberg v. City of Augusta*, 662 A.2d 227, 229 (Me. 1995). See also *Estate of Chartier*, 2005 ME 17, 866 A.2d 125.

## ARGUMENT

As stated above, at the time the Decree of adoption for Amber by her father and step-mother was granted, the Maine Probate Code provided in section 2-109 (1) that, “An adopted person is the child of an adopting parent and not 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.” {*emphasis added*} The relationship between Alicin and Amber, when it comes to Amber’s inheritance rights, therefore, pursuant to law, was not affected by the adoption of Amber by Edward and his spouse. Pursuant to 8-301(2)(D) and 9-108 of the current Probate Code, former section 2-109(1) defines Amber’s right to inherit from her mother.

18-A §2-109(1) of the Probate Code has been held to mean that, “The unambiguous language at the end of the first sentence stating that the adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and either parent results in that child being the ‘child’ of and inheriting from both natural parents. The adoption by a stepparent, in other words, does not affect the relationship between the adopted person and either of his natural parents for purposes of intestacy and the Probate Code.” *Estate of Jacobs*, 1998 ME 233, ¶ 5.

In addition to the statutory right to inheritance, the Decree itself provides that Amber retained her inheritance rights from Alicin. The Decree states that, “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...” {*emphasis added*} In the case at bar, the adopting parent was the spouse of a natural parent, Edward, so the Decree is stating that Amber shall not lose her right to inherit from her natural parents (including Alicin) and their respective kin. Therefore, the adoption decree affirmatively provides that Amber does not lose her right to inherit from her natural parents, including Alicin. Any other interpretation would make the reference to the adopting parent being the natural parent and his spouse totally meaningless.<sup>2</sup> Put another way, if the adopting parent not being a natural parent and his spouse means Amber would have lost her inheritance rights, then the opposite is also true and she did not lose her inheritance rights.

The Court would not have been compelled to state an additional explicit right to inherit in the Decree, since that was already true pursuant to the Probate Code at the time. Just because the language in the Decree was re-stating the law, however, does not make it any less directive.<sup>3</sup> The Probate Code statute at the time the Decree was granted is also a part of the Decree, and further satisfies any requirement that the

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<sup>2</sup> Applying Appellant’s interpretation to the language of the Decree could also result in Amber losing her right to inherit from her natural father, Edward, since he was not the spouse of a natural parent.

<sup>3</sup> See current Consent and Adoption Decree forms used by the Courts with similar “boilerplate” language mirroring current law.

Decree provide for the retention of Amber's inheritance rights. The adoption Decree was granted pursuant to Maine law at the time, and, as stated above, Section 2-109(1) provided that Amber retained her right to inherit from Alicin.

The Probate Court's interpretation of the Decree is consistent with Maine law, as well as consistent with the intent and wishes of Alicin as noted not once, but twice, in her signed Consent. As stated above, Alicin signed the Consent of Non-Petitioning Parent twice. On January 20, 1992, she signed under the section that included the statement that, "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 my kin at the time of this adoption unless the adoption decree specifies otherwise." Alicin's signature under this section was taken under oath and notarized by the Judge of Probate, Dana M. Childs. Alicin was aware that the adopting parents were Edward and his spouse, so she understood that Amber would not lose her legal right to inherit from her and her kin.<sup>4</sup>

Amber reiterated her intent that Amber retain her inheritance rights through her and her kin by signing the Consent again on January 27, 1992 under the section that reads that, " Even 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

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<sup>4</sup> Given Alicin's clear intent in her signed consent that she understood and wanted Amber to retain her right to inherit from her, should it be held that the Decree does not contain this provision, does that invalidate the Consent, and thus, the adoption?



preserve to my child the right to inherit from me and my kin.” This section was also taken under oath and notarized by Judge of Probate, Dana M. Childs. This section gave a clear directive for 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,” which the Court did, or, if the Court did not, it was through error and mistake on the part of the Court given the clear intentions stated by Alicin in her signed Consent that Amber not lose her inheritance rights through her and her kin.<sup>5</sup>

The effect of Amber’s adoption decree on her right to inherit is governed by the Probate Code in effect at the time the decree was granted. Former 2-109, current 8-301(2)(D) and 9-108 are clear that the granting of the adoption Decree has no effect on Amber’s right to inherit from her natural mother. To hold otherwise would be to retroactively rewrite hundreds, if not thousands, of adoption decrees issued under the prior Title 18-A. Statutes are not given retroactive application unless the intent to do so is clear and unambiguous, especially when such application would divest and interfere with a substantial right such as the right to inherit. *See generally Sinclair v. Sinclair*, 654 A.2d 438 (ME. 1995); *Lothrop v. Lothrop*, 2016 ME 23; *Greenvall v. Me. Mut. Fire Ins. Co.* 2001 ME 180, 788 A.2d 165.

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<sup>5</sup> An integral part of Alicin’s consent was her understanding that Amber would retain the right to inherit from her, keeping that connection between her and Amber. Without Alicin’s signed consent, the Probate Court would not have been able to grant the Adoption Decree absent an affirmative order to terminate Alicin’s parental rights.

Although Appellant argues that the current Probate Code sought to retroactively disinherit thousands of children who were adopted by their step-parent under Title 18-A, the current Probate Code contains no such language. Section 2-117 provides that an adoptee “may...inherit from the adoptee’s former parents if so provided in the adoption decree.” It is permissive, not restrictive. It does not say it is the only way that an adoptee may inherit from former parents.<sup>6</sup> It is also prospective in application as it does not mention previous orders already issued.

In addition, the section of the code relied upon by Appellant, section 8-301, does not include Article 2, Part 1, Subpart 2 or Article 9 in the language specifying the interplay between the effective date of the new code (September 1, 2019) and the intestate succession provisions of the code. Specifically, 18-C M.R.S. §8-301(2)(A-1) states that, “The intestate succession provisions of Article 2, Part 1, Subpart 1 *{emphasis added}*, the elective share provisions of Article 2, Part 2, the exempt property and allowances provisions of Article 2, Part 4 and the wrongful death provisions of section 2-807 apply to the estates of decedents who die on or after the effective date.” Section 8-301(2)(A-1) clearly provides that the newly enacted distribution provisions of Article 2, Part 1, Subpart 1, the elective share, exempt property and allowances, as well as the wrongful death provisions apply to intestate

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<sup>6</sup> Compare 18-A §2-109(1) “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,” as to non step-parent adoptions, with 18-C §2-117, “An Adoptee, however, may inherit from the adoptee’s former parents if so provided in the adoption decree.” *{emphasis added}*



estates for decedents who die on or after the effective date of September 1, 2019. Absent from 8-301(2)(A-1) is Article 2, Part 1, Subpart 2, which contains section 2-117 relied upon heavily by Appellant. Given that A-1 specifies certain sections that would apply, the fact that Article 2, Part 1, Subpart 2 is not listed means it applies prospectively only, to adoptions entered after the effective date of September 1, 2019. Subpart 2 is not meant to be relied upon for the purpose of determining intestate succession and distribution for adoptions entered prior to the effective date; that is determined by the law in effect at the time of the entry of the adoption decree.<sup>7</sup>

Similarly, Section 8-301(2)(D) is clear that, “An act done before September 1, 2019 in any proceeding , and any accrued right is not impaired by this Code.” The act done in the case at bar was the granting of the adoption decree, which by law and by the terms of the consent to the adoption, as well as the Decree, retained the rights of Amber to inherit from Alicin. Alicin was aware of Amber having retained her right to inherit, (she requested it) and could have made a Will if she changed her mind about this status.<sup>8</sup>

Appellant’s reliance on 8-301(2)(B) is also misplaced. That section applies to proceedings, such as civil proceedings, pending as of the effective date, and the

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<sup>7</sup> This Attorney served as a member of the Judiciary Committee and Chair of the sub-committee to oversee the writing of the new Probate Code in the 128<sup>th</sup> Maine State Legislature tasked with drafting the new Probate Code ultimately enacted as title 18-C.

<sup>8</sup> Appellant argues that Amber could have amended her Adoption Decree. There is no such right of an adoptee under Maine law.

procedures the Court should apply in conducting those proceedings. Amber's adoption by her natural father and his spouse was not pending as of September 1, 2019, it had been finalized with the entry of the Decree of adoption. As stated above, the applicable section of 8-301 to the question at bar is subsection (2)(A-1) and 2(D), as well as section 9-108 specific to adoptions.<sup>9</sup>

The provision in 8-301(2)(F) for adoptions entered before enactment of the previous probate code in title 18-A is simply a provision carried forward from that code. It is not meant as a limitation on the current code. Specifically, 18-A §8-401(b)(6) states that, "For an adoption decree entered before the effective date and not amended after the effective date, the child shall be the child of both the natural and adopting parents for purposes of intestate succession, notwithstanding section 2-109, subsection (1), unless the decree provides otherwise." Compare with 18-C §8-301(2)(F) which reads that, "For an adoption decree entered before January 1, 1981, and not amended after 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." As stated above, this shows the legislative intent to retain the status quo as to adoption decrees already granted or pending.

The so-called "boilerplate" language in Amber's adoption decree is both relevant and controlling. That language provides that, " If the adopting parent is not

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<sup>9</sup> Note that 9-108 does not contain the word "pending" unlike 8-301(2)(B).

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” If the Judge had wished to exclude this language, he could have struck it from the decree, or “otherwise provided here.” Given the fact that he kept it in the decree, coupled with Alicin’s clear intent in her signed consent, can only lead to the conclusion that Amber did not lose her right to inherit from Alicin. The enactment of the current Probate Code did not alter that specific finding by the Court.

## CONCLUSION

Based on the above, the Appellee requests this Court uphold the Probate Court's decision, and for such other and further relief as this Court deems just and proper.

Dated at Saco, Maine this 22nd day of January 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, DONNA A. BAILEY, ESQ., Attorney for Appellee, Amber Hansen, hereby certify that on January 22, 2024, I made service of the within Appellee's Brief upon the Appellant by depositing 2 copies of the same in the U.S. Mail, postage prepaid, addressed as follows, as well as an electronic copy to Maryellen@portcitylegal.com:

Maryellen Sullivan, Esq.  
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Dated: January 22, 2024

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