10-1985

Reed v. Campbell, Individually and as Administrix of the Estate of Ricker

Lewis F. Powell Jr.

amc 11/27/85

D & D

PRELIMINARY MEMORANDUM

December 6, 1985, Conference
List 1, Sheet 1

No. 85-755-ASX

Appeal from Tx. Ct. App.
(Ward, Osborn, Schulte)

DELYNDA ANN RICKER BARKER REED
(illegitimate child seeking share of father's estate)

v.

PRINCESS ANN RICKER CAMPBELL
(administratrix of Prince Ricker's estate)

State/Civil

Timely

1. SUMMARY: Appt raises a number of claims challenging a take nothing judgment rendered against her in her suit seeking to share in her father's intestate estate, including an argument

D & D. Anne

that Tx. Ct. App. erred in refusing to apply Trimble v. Gordon, 430 U.S. 672 (1977), retroactively.

2. FACTS AND DECISION BELOW: Appt claims to be the illegitimate child of Prince Ricker, who died intestate in 1976. Appee is adminstratrix of Prince's estate. In 1976, §42 of Tx. Probate Code provided that, while illegitimate children could inherit from their mothers, they could not inherit from their fathers unless they were legitimated by a later marriage between father and mother. In 1977, Trimble v. Gordon, 430 U.S. 672 (1977), invalidated an Illinois statute that allowed illegitimates to take from their mothers but not from their fathers. Under the statute in Trimble, an illegitimate could be legitimated only if his parents later married each other and his father acknowledged him. Following Trimble, Texas amended §42 to provide that an illegitimate child could inherit from his father if (1) he was born or conceived before or during the marriage of his father and mother, (2) he was legitimized by court decree as provided in Chap. 13 of the Tx. Family Code, or (3) his father executed a statement of paternity.

At the time of Prince's death, Tx. Fam. Code §13.01 provided that a paternity suit was barred unless brought before the child was one year old. This version of §13.01 was invalidated by this Court. Mills v. Habluetzel, 456 U.S. 91 (1982). Ultimately, the section was amended in 1983 to provide that a paternity action must be brought on or before the second anniversary of the day the child becomes an adult.

In 1979, appt filed an application to determine heirship, contending that she was the legitimate child of Prince and was entitled to inherit from his estate. Appee and four other children of Prince's three marriages claimed to be Prince's only heirs at law. A jury found that appt was Prince's child but that Prince and appt's mother had never been legally married. The jury's findings also indicated that Prince and appt's mother did not have a "common law" marriage. Based on these findings, the TC entered a "take-nothing" judgment against appt, apparently applying the version of §42 in effect at the time of Prince's death.

Appt appealed to Tx. Ct. App. Unfortunately, that court's opinion is not clear. One of appt's arguments, as described in the opinion, was that she was "entitled to inherit since to provide otherwise" would violate the Equal Protection Clause. Tx. Ct. App. rejected that argument on the ground that Trimble had not "been applied retroactively where the father died before [Trimble] came down and suit was filed afterwards." App. at 9. The court went on to say that, even if appt "could claim under Section 42(b) as amended, her exclusion from the inheritance under that statute does not deny her constitutional equal protection since a rational state basis supports that legislation." See Davis v. Jones, 626 S.W.2d 303 (Tx. 1982).

Tx. Sup. Ct. denied review.

3. CONTENTIONS: First, appt contends that Tx. Ct. App. erred in declining to apply Trimble retroactively. Appt identifies a number of lower court decisions that do apply Trimble to

an heirship claim in an open estate of a decedent who died following the decision in Trimble. E.g., Gross v. Harris, 664 F.2d 667 (CA8 1981) (illegitimate seeking social security benefits); Nagle v. Wood, 178 Conn. 180 (1979); Easley v. John Hancock Mutual Life, 271 N.W.2d 513 (Mich. 1978); In re Estate of Burris, 361 So.2d 152 (Fla. 1978). Appt also points out that the cases have not been consistent in the analysis used to decide whether or not to give Trimble retrospective effect. In appt's view, the better reasoned decisions follow the test laid out in Chevron v. Huson, 404 U.S. 97 (1971).

Second, appt argues that Tx. Ct. App.'s decision conflicts with Pickett v. Brown, 462 U.S. 1 (1983), which held that illegitimate children must be given a reasonable opportunity to establish paternity and which invalidated a statute imposing a two-year statute of limitations on paternity actions. Since appt was born before the effective date of Tx. Fam. Code §13.01, which created the legitimation action, she had no opportunity to satisfy §47(b). Moreover, the action of the lower courts is wholly arbitrary because the jury found that appt was Prince's daughter. That finding fully satisfies the proof requirements erected by §47(b).

Third, appt argues that the challenged statutes embody an unconstitutional sex-based classification because maternal heirship can be established by a preponderance of the evidence while paternal heirship is not allowed. In this case, the jury found, on convincing evidence, that appt was Prince's child.

Appee argues that there is no need to decide whether Trimble should be applied retroactively because Tx. Ct. App. decided that appt would not be entitled to take under the current version of §42(b). Moreover, appt could have filed a common law paternity suit. But, in fact, appt made absolutely no effort to establish paternity prior to filing her heirship application.

4. DISCUSSION: I doubt that this is a proper appeal. Appt bases jurisdiction on 28 U.S.C. §1257(2). The state court did not hold that the version of §42 in effect at the time of Prince's death was consistent with the Constitution; rather, it declined retroactively to apply a decision of this Court. Moreover, I doubt that appt argued that application of the statute to the facts of this case would be void under federal law; rather, she probably argued that her equal protection rights prevented application of the statute to her. See Stern & Gressman §3.4 at 162-164. Accordingly, I believe that the Court should follow appt's suggestion and treat her papers as a petition for cert. Yes

Appt does identify cases applying Trimble retroactively under circumstances similar to those presented here. I think that the Court should decline to review the issue, notwithstanding this conflict. Trimble was decided in 1977 so that the importance of resolving the issue of its retroactivity does not seem pressing since cases raising the issue will no longer frequently arise. Moreover, Texas has amended the version of §42 in effect at the time of Prince's death, and that version appears to comply with the Court's later pronouncements on methods of establishing paternity for purposes of intestate succession. Lalli v.

Lalli, 439 U.S. 259 (1978) (upholding statute permitting inheritance from natural father only if "court" has declared paternity during father's life). And, Tx. Ct. App. stated that, even if amended §42(b) governed appt's claim, she would not be entitled to take because she did not satisfy any of the authorized forms of proof.

Appt's second point troubles me because I do not understand why Tx. Ct. App concluded that the jury's determination that she was Prince's child was an insufficient finding of paternity. At first glance, the jury's decision seems equivalent to other judicial pronouncements of paternity. Tx. Ct. App. must have rejected that contention, but it simply fails to mention the point, with its entire discussion of her failure to satisfy amended §42(b) occupying one sentence. Appt's argument that she had no reasonable opportunity to establish paternity, as required by this Court's decision in Pickett, is also troubling. Appt could have brought a common law paternity action, but such actions had limited statute of limitations. See Wynn v. Wynn, 587 S.W.2d 790 (Tx. Ct. App.).

Nevertheless, I recommend that the Court deny review. First, the issues that appt seeks to raise are generally settled, and the Texas statutes have been amended to comport with this Court's decisions. Second, the facts of the case, which apparently were hotly contested, are very unattractive. For example, Tx. Ct. App. noted that some of appt's proof was based on Prince's "recognition" of her as his child. The court rejected the evidence because Prince, who was an alcoholic and non compis

mentis, had his moments of "recognition" during periods of "deteriorated mental condition." These circumstances suggest to me that the State does have a legitimate interest in having particular methods of proving paternity for purposes of heirship.

Finally, appt's sex discrimination claim was not discussed by Tx. Ct. App. so that I am not sure that she pressed it there. Moreover, the claim is overstated. It is clear that the State does provide procedures by which an illegitimate can establish his right to take from his father, and those procedures seem consistent with Lalli v. Lalli, supra. Appt's problem is that the procedures do not include a jury finding in the context of an heirship claim.

5. RECOMMENDATION: I recommend dismiss and deny.

There is a response.

November 27, 1985 Coughlin Opinion in petn

Court ..... Voted on ....., 19...

Argued ....., 19... Assigned ....., 19... No. 85-755

Submitted ....., 19... Announced ....., 19...

REED

vs.

CAMPBELL

BRW would grant if this were a cert but he thinks Q is substantial

Note

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.						✓							
Brennan, J.				✓									
White, J.				✓									
Marshall, J.						✓							
Blackmun, J.				✓									
Powell, J.						✓							
Rehnquist, J.						✓							
Stevens, J.				✓									
O'Connor, J.						✓							

April 18, 1986

Weber, relied on in Trimble, is relevant.

REED GINA-POW

85-755 Reed v. Campbell, Individually, and as Administratrix of the Estate of Prince Rupert Ricker, Deceased, (Texas Court of Appeals)

MEMO TO ANNE:

You recommended to the Conference that we D&D this case. You were so right! It is a mess, and nothing is very clear. As you observed, now that the case is here we should treat it as a cert petition.

Simply to refresh my recollection, I will state the bare facts. Petitioner (with an extraordinary name!) was born November 1, 1958 when her mother and father were living together, but were not lawfully married. The case was tried to a jury, and it found that she was the child of Prince Richer (the deceased), but under Texas law is an illegitmate. Petititioner brought this suit against respondent as administratrix of her natural father's estate. Her father died intestate, leaving four legitimate children who also were defendants in this case.

Estate counted as one each

It is not entirely clear to me what Texas law provided at the relevant date. Prior to my 1977 decision in Trimble v. Gordon, 430 U.S. ~~672~~ 762, Section 42 of the

Prior to my Trimble decision in 1977

Texas Probate Code provided that, while illegitimate children could inherit from their mother's, they could not inherit from their father's unless they were legitimatized by a later marriage between their father and mother. In 1977, Trimble v. Gordon, 430 U.S. 672, invalidated an Illinois statute that allowed illegitimates to take from their mother's but from their father's only if their parents later married each other and the father acknowledged the illegitimate as his child.

Subsequent to Trimble, Texas amended Section 42 to provide that an illegitimate child could inherit from his father if (i) he was born or conceived before or during the marriage of his mother and father,[1] (ii) was legitimatized by a court decree; or (iii) his father executed a statement of paternity.

In a proceedings to "to determine heirship" filed in February 1979, petitioner claimed entitlement to inherit from her father's estate. She also claimed that her mother and father, although not lawfully married, had established a "common law marriage". Responding to

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[1] See p. A6 of Jurisdictional Statement. I don't understand what this means.

Special Issues, the jury found in effect that there was no common law marriage, and that at the times she was conceived and born her father was married to a woman who was not her mother. As a result of the jury's finding that the petitioner was an illegitimate, a "take-nothing judgment" was rendered against respondent. Apparently the Texas court applied the version of Section 42 in effect at the time the father died on December 22, 1976. At that time Trimble was not decided, and apparently the Texas Court of Appeals applied Section 42 as it was in effect prior to Trimble: namely, an illegitimate could not inherit unless legitimated by a later marriage between the father and mother.

Petitioner correctly argues, I think, that Section 42 in effect at the time of her father's death was clearly invalid under Trimble. The Texas Court of Appeals declined to apply Trimble retroactively. And apparently other courts have been divided as to its retroactivity. Petitioner argues that in any event the application of Section 42, as in effect at the time of her father's death, violates the Equal Protection Clause.

As noted above, Texas amended Section 42 following Ricker's death, and the amended Section 42 at least

arguably is consistent with our divided opinions in Lalli v. Lalli, 439 U.S. 259 (1978). In that case, we upheld a statute permitting inheritance from a natural father only if the father had made a declaration of paternity at sometime prior to his death. In this case, the father affirmatively insisted - apparently at all times - that petitioner was his daughter. There was, however, no formal declaration of paternity, and the Texas court noted that he was a hopeless alcoholic and non compis mentis most of the time. //

But no formal →

The opinion below and appellees' brief verge on being incomprehensible. I therefore am not sure as to exactly the issue before us. If the Equal Protection issue were here (and I think this is doubtful), I would be inclined to hold that Trimble does apply retroactively. Thus, Section 42 was invalid. I assume this would require a reversal and remand.

Trimble should be applied retroactively — thus § 42 was invalid

than appellant's

The appellees printed brief is a great deal better, and it makes some rather persuasive arguments. First, we are asked to DIG the case for several reasons. It is said that petitioner "lacks standing to assert the rights of third parties", an argument I do not understand. It is further stated that this Court would have to overturn

findings of fact by the state court - findings that are fully supported by the record. In addition, it is argued that we would be required to construe state law. As much as I would like to forget this case, I am not sure that we should DIG it - having made the mistake of noting probable jurisdiction.

With respect to the Equal Protection claim, counsel for appellee insists that state law determines the question of retroactivity, and that under Texas law Trimble can be applied prospectively only. This is a question I have not maturely considered, and would like Anne's view. My own intuitive reaction is that since Trimble was a constitutional decision, its retroactvity is a matter of federal law.

While recognizing that I have not forced myself to consider this unattractive case more carefully, I assume that we were prompted to grant it to determine the retroactivity of Trimble. If this is the primary question before us, as noted above I view it as one of federal law and would apply Trimble retroactively.

Although I definitely do not want a long memo, Anne, I would welcome a two or three page summary of your views.

LFP, JR.

Ask

What statute was in effect when father died?

Under the post Trimble Texas statute (amended § 42) illegitimate could inherit if (i) born or conceived before or during marriage of parents, (ii) legitimated by court decree, or (iii) father executed a statement of paternity.

None of these conditions was met. If this statute applies, it may be valid: It merely requires an executed statement by father.

But here father was mentally incompetent.

85-755 REED v. CAMPBELL

Argued 4/30/86

Mc Walley (Appellant)

Procedure is important. No order has been.

Father died before Trimble. ~~Suit was filed~~ claim filed after Trimble.

~~Three forms of retroactive~~:

But as proceeding is still open, Trimble applies. Estate is still open

Seeking no support [illegible] – only right to inherit

Proof of paternity here is ~~constituted~~ conclusive. Stronger than in Weber.

As estate is still open, applying Trimble retroactively will not affect any vesting of title or prior distribution of the estate

An illegitimate may inherit from mother, there is sex discrimination

First argument is that Trimble is retroactive.

McCollum (Resp)(not persuasive)

Only issue in case is substantiality:

Two elements:

1.

The chronology:

§ 42 enacted in 1955. – under it the father must have acknowledged paternity.

? [Appellant had 22 years to bring suit.

~~Aug~~ April 1977 – Trimble decided Texas legislature, two months later, changed its law. In 1979, statute again changed.

§ 1301 ~~=~~ of Family Code provides a special procedure for ~~establ~~ establishing paternity. (Scientific way)

~~Pltf's action~~

Father was alcholic for years

Jury found Ricker was the father, but this finding is irrelevant (J.P.S. challenged ~~not~~ on this, noting that if jury had found no paternity, this case would not be here. Appellant would not have standing if this finding had not been made.

McCallum (cont.)

~~[redacted]~~

(I believe Trumble applied to estates still in probate.)

Was this estate still in probate when Trumble was decided.

5/1

85-755 Reed v. Campbell (Tex Ct. of Civ. App.)

DIG or Reverse

(paternity case)

1. Trimble case. { deceased in 1977

Jury found Reh. was the ~~child~~ illegitimate child of Rucker.

§ 42 Texas codes: no right to inherit from father unless legitimized by later marriage.

Father died in 1977 before Trimble (similar to § 42)

But probate proceedings was underway at time Trimble was decided.

2. Trimble should apply retroactively. Reverse on this ground - Chevron GE

85-755 (NZ)

3. Or §42 is invalid under Trimble. Pet should have a reasonable opportunity to establish her inheritance right in the proceedings that preexisted CA 25 decision.

4. Remand

Need not decide other issues.

Texas TL formal ND common law marriage

4

85-[illegible]5 Reed v Campbell, Texas 3d mx.

Trimble v Gordon (1977) invalidated Ill. statute: illegitimates could take from Mother but not father unless parents married + father acknowledged his paternity

Texas § 42 in effect when Trimble was decided ~~=~~ was similar to Ill: illegitimate could not inherit from father unless legitimated by later marriage.

§ 42 was amended + liberalized (see p 2 my memo)

Peter was born in 1958 & was illegitimate. Parents never married. Thus she could not inherit under Texas statute. Father died in 197[illegible]. Suit was brought in in 1979.

amc 05/01/86

May 1, 1986

To: Mr. Justice Powell

From: Anne

Re: No. 85-755, Reed v. Campbell (appeal from Tx. Ct. App.)

Some aspects of this case are difficult to resolve because the opinion of the lower court is not clear and because the briefing is not helpful. Appt, who is an illegitimate child, seeks to inherit from the estate of her natural father, who died intestate. In essence, her claim is that she was denied an opportunity to establish paternity under various Texas statutes, a prerequisite to inheritance. Although the statutes have been amended several times in recent years to afford illegitimates broader opportunities to establish their right to inherit and to child support, appt appears to have fallen through the cracks; in other words, each time a statute of limitations was extended, appt apparently was already outside of the limitations period. Briefly stated, the following represents my thinking concerning the issues raised by app't.

Retroactivity of Trimble v. Gordon, 430 U.S. 762 (1977).

In Trimble, your opinion for the Court invalidated a provision of the Illinois Probate Code that provided that an illegitimate could inherit from his father only if his parents married and the father acknowledged the child as his child. Trimble held that the provision constituted a violation of equal protection because the classification did not bear a rational relationship to a legitimate state interest.

The Texas statute in effect at the time of appt's father's death was virtually identical to that invalidated in Trimble. While the opinion of Tx. Ct. App. in this case is not crystal clear, the court rejected appt's argument that she was "entitled to inherit since to provide otherwise would be unconstitutional under the Equal Protection" Clause. The court stated that Trimble "has not been applied retroactively where the father died before the case came down and suit was filed afterwards." One issue raised by appt here is whether the Tx. Ct. App. properly ruled that Trimble should not be applied retroactively.

I recommend that you vote to reverse on this ground. Under principles of stare decisis, case law ordinarily does have some retroactive effect. This Court has recognized both in decisions involving civil law and those involving criminal procedure that in some circumstances a "new" rule of law should not be applied retroactively. In the area of criminal procedure, you have endorsed Justice Harlan's view that a new rule should apply in future cases and in cases pending on direct appeal when the decision announcing the new rule is handed down; the new rule should

not, however, be applied on collateral attack of a criminal conviction.

In the civil area, the governing test was set out in Chevron Oil Co. v. Huson, 404 U.S. 97 (1972), and involves consideration of three separate factors. "First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, . . . or by deciding an issue of first impression whose resolution was not clearly foreshadowed. . . . Second, it has been stressed that 'we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its purpose. . . . Finally, we have weighed the inequity imposed by retroactive application, for '[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity.'" Id., at 106-107.

A good argument can be made that Trimble did not announce a new rule because the rule was foreshadowed in prior decisions. (This determination is difficult, and I need to think further about it). Assuming that Trimble did announce a new principle of law, the other two factors, in my view, fully support retroactive application in the circumstances of this case. First, I want to emphasize that this case does not present a claim that Trimble should be applied retroactively to open a judgment in probate finally determining the appropriate shares to be taken by claim-

ants to an estate. (That situation would resemble collateral attack on a final conviction, and I think that a strong argument can be made that Trimble should not be applied retroactively in an attack on a closed estate). Therefore, application of Trimble here would not upset orderly administration of probate. Just as judges ordinarily should apply to a case pending before them applicable decisions of this Court that are handed down while the case is pending, so I think that Trimble should be applied in an estate that is pending when Trimble was announced. (This situation more closely resembles a case pending on direct appeal when a new rule of criminal procedure is announced, than it does habeas corpus attack). Second, I see no inequity in applying Trimble here. At most the intestate heirs of appt's father had an expectation that they might inherit from his estate. They had no vested property rights or reliance interests that would be upset by virtue of application of Trimble. Third, the purpose of Trimble to eliminate discrimination against illegitimates would be served by applying its rule in this case.

Unfortunately, resolution of the Trimble issue does not necessarily dispose of this case. Appt assumes that, once the invalid portion of the probate code is set aside, she is entitled to take under the provisions generally applicable to legitimate intestate heirs. In my opinion, that assumption is unfounded because States do have an interest in ensuring that paternity claims are decided in a fair and orderly manner, and States therefore are entitled to enact statutes that prescribe certain evidentiary standards that illegitimate children must satisfy in

order to be entitled to inherit. See Mills v. Habluetzel, 456 U.S. 91 (1982) (Because of difficulty of proving paternity, "in support suits by illegitimate children more than in suits by legitimate children, the State has an interest in preventing the prosecution of stale or fraudulent claims, and may impose greater restrictions on the former than it imposes on the latter. Such restrictions will survive equal protection scrutiny to the extent they are substantially related to a legitimate state interest.") For me, the question next becomes: once the invalid statute is set aside, what provision should govern appt's claim to inherit?

While refusing to apply Trimble here, Tx. Ct. App. appears to have assumed that, if Trimble were applicable, appt's claim would be governed by the 1979 version of §42(b) of the Probate Code. Under that provision, an illegitimate child can inherit from his father if the child is born or conceived before or during his parents' marriage, if he is legitimized by court decree under Chapter 13 of the Family Code, or if his father has executed a statement of paternity under §13.22 of the Family Code. Tx. Ct. App. went on to say that "[e]ven if [appt] could claim under Section 42(b) as amended, her exclusion under that statute does not deny her constitutional equal protection since a rational state basis supports that legislation." Therefore, the court can be viewed as giving alternative holdings: (1) Trimble does not apply in this case; and (2) even if Trimble does apply, appt is barred from inheriting anyway because she does not satisfy the current version of §42(b).

Accordingly, the question finally becomes whether appt ever had an opportunity to satisfy §42(b). Her difficulty arose from the fact that each time the Probate Code and Family Code were amended to liberalize the means by which illegitimates could establish paternity, the amended provisions apparently contained statutes of limitations that barred her from taking advantage of those means. This Court's precedents stand for the proposition that, once the State provides an opportunity for legitimate children to inherit or obtain support, it must also grant that opportunity to illegitimate children. Moreover, that "opportunity" must be adequate. The Court has invalidated statutes that provided that suits to establish paternity must be brought within one year of the child's birth, Mills, supra, and within two years of birth, Pickett v. Brown, 462 U.S. 1 (1983). In the related context of actions for support, the Court has stated that "the period for obtaining paternal support has to be long enough to provide a reasonable opportunity for those with an interest in illegitimate children to bring suit on their behalf; and any time limit on that opportunity has to be substantially related to the State's interest in preventing the litigation of stale or fraudulent claims." Id., at 9. The remaining issue here, therefore, is to apply that analysis to Tex. Ct. App.'s denial of benefits to appt.

Unfortunately, as noted above, the Texas laws governing illegitimates' inheritance rights have been amended several times in the past several years, making it very difficult to be certain whether appt did have an adequate opportunity to establish her

rights. Moreover, the parties dispute whether or not she had any such opportunity, and Tx. Ct. App. did not speak to the issue. My own conclusion is that the statutes, though now in compliance with this Court's precedents, did not afford appt such opportunity, though it appears that Texas may have recognized a common law paternity action. Since the principles governing this area are well settled, and since the underlying facts and Texas law applicable to those facts are not clear, my view is that the Court should analyze the issue as follows. First, the Court should hold that Trimble applies in this case. Second, the Court should note that its precedents require that an illegitimate child be given a reasonable opportunity to establish her inheritance rights and that it appears that Texas law did not afford appt that opportunity. Third, the Court should remand to Tx. Ct. App. for a determination of whether appt did have a reasonable opportunity to establish her rights. If she did have such an opportunity but failed timely to pursue it, she should lose. If not, she should be entitled to such an opportunity now.

Remaining Issues

(1) Sex Discrimination. The thrust of this claim is that the Texas heirship statutes discriminate against mothers on the basis of their sex: appt argues that those laws burden surviving mothers because the illegitimate child is barred from heirship in his father's estate and, unlike surviving fathers, the mother is denied access to his estate to obtain support for the child. The Court should decline to consider the claim. At oral argument,

counsel for appt conceded that this claim was an alternative to his Trimble claim; counsel agreed that if he prevailed on the Trimble claim, there would be no need for the Court to reach his sex discrimination claim.

(2) Legitimation Issues. Appt raises additional claims relating to Chapter 13 of the Family Code, which provides a procedure through which an illegitimate child may obtain a paternity decree. At oral argument, counsel for appt stated that this category of claims was substantial because it was important for appt to achieve the status of "legitimate" child rather than being stigmatized as an "illegitimate" child and to obtain attorney's fees. To the extent that appt's claims to legitimation are independent from her claim to inherit, I think that the Court should decline to reach the legitimation issues. (The issues overlap because Chapter 13 provides one means by which an illegitimate can establish inheritance rights; therefore, in deciding if appt had a reasonable opportunity to establish such rights, it will be necessary to consider the effect of Chapter 13.) Even if the legitimation claims were presented to the lower court as issues separate from the inheritance claim, that court did not expressly pass on them. I think that in the lower courts, the thrust of appt's position was her claim to inheritance; moreover, she did at one point claim that her father's estate owed her child support. My review of the joint appendix suggests that petr never did argue that the "status" of being a legitimate child was independently important to her; rather, she wanted to establish that she was her father's daughter so that

she could obtain some of his money. Moreover, the opinion of Tx. Ct. App. does not reflect any argument concerning appt's desire to achieve the status of a legitimate child or concerning the constitutionality of the legitimation provisions. Rather, the opinion discusses only claims relating to the Probate Court's denial of inheritance rights. Under these circumstances, I think that the Court can exercise its discretion and decline to consider these claims.

(3) Finally, I think that the case is a candidate for a DIG. Apart from the issue of whether Trimble applies retroactively, the standards governing the claims in this case are well settled. Moreover, since Trimble was decided several years ago, the question of its retroactivity is unlikely to be of recurring importance. As we have discussed, the briefing was unhelpful, the issues in the case are not presented with clarity, the opinion of the lower court is murky, and the facts are hotly disputed and very unattractive. The fact that the decision would settle the Trimble question points in favor of deciding that question. But I doubt that the decision will be of much importance to anyone but these parties.

No. 85-755, Reed v. Campbell Rev. Conf. 5/2/86

The Chief Justice Dissmiss for WANT Properly Presented Fed Q.
The issue here will never arise again. Case is of little importance.
Estate was still open when Trimble was decided. When Pet entered the proceedings, Trimble had been decided & controls.
Jury has established paternity

Justice Brennan Rev. Under Trimble
1955 was invalid under Trimble.
The Texa Ct erroneously applied '79 law though it didn't apply. We therefore don't have to consider the validity of '79 law.
Bill Hunter legitimation claim was not raised under this Ct
Only Trimble Q is here, & we can reverse on it.

Justice White Rev.
Reverse as Trimble. This is only issue properly presented

Justice Marshall Dissent - as 5G suggests

Justice Blackmun Rev on Trumble

Justice Powell Could Dissent as 2 suggests or Reverse

Estate was open & is still open.

Trumble applied, & could Rev on it -

Justice Rehnquist Rev

Trouble con State

Do not reach other issues

Justice Stevens Rev.

Reverse on Trouble. Her right vested on date of

Not reach legitimation or other issues

Justice O'Connor Rev.

Agree with John

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice O'Connor

From: **Justice Stevens**

Circulated: MAY 27 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-755

DELYNDA ANN RICKER BARKER REED, APPELLANT *v.* PRINCESS ANN RICKER CAMPBELL, INDIVIDUALLY, AND AS ADMINISTRATRIX OF THE ESTATE OF PRINCE RUPERT RICKER, DECEASED

ON APPEAL FROM THE COURT OF APPEALS OF TEXAS, EIGHTH SUPREME JUDICIAL DISTRICT

[May ——, 1986]

JUSTICE STEVENS delivered the opinion of the Court.

Prince Ricker, appellant's father, died intestate on December 22, 1976. At that time, § 38 of the Texas Probate Code provided that a decedent's estate should descend to "his children and their descendants,"[1] but § 42 prohibited an illegitimate child from inheriting from her father unless her parents had subsequently married.[2] In *Trimble v. Gordon*, 430 U. S. 762 (1977)—decided four months after Ricker's death—we held that a total statutory disinheritance, from the paternal estate, of children born out of wedlock and not legitimated by the subsequent marriage of their parents is unconstitutional. In this case, the Texas Court of Appeals held that § 42 of the Texas probate code nevertheless pre-

[1] See Texas Probate Code § 38 (Vernon 1980) ("Where any person having title to any estate, . . . shall die intestate, leaving no husband or wife, it shall descend and pass in parcenary to his kindred, male and female, in the following course: 1. To his children and their descendants . . .").

[2] See Texas Probate Code § 42 (1955) ("For the purpose of inheritance to, through, and from an illegitimate child, such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit *from his mother and from his maternal kindred*, both descendants, ascendants, and collaterals in all degress, and they may inherit from him") (emphasis added).

vented appellant from sharing in her father's estate because *Trimble* does not apply retroactively.[3] The Texas Supreme Court refused appellant's application of error, noting "no reversible error." We noted probable jurisdiction, —— U. S. —— (1985), and now reverse.

I

Only a few facts need be stated. In November of 1957, Prince Ricker and appellant's mother participated in a ceremonial marriage, but it was invalid because Ricker's divorce from his first wife was not final. Appellant was born a year later. Ricker was lawfully married three times, once before and twice after his liaison with appellant's mother. He was survived by five legitimate children (two from his first and three from his third marriage) and by appellant.

Shortly after Ricker's death in 1976, his oldest daughter was appointed administratrix of his estate. The estate was still open in February of 1978, when appellant formally notified the administratrix and the probate court of her claim to a one-sixth share of the estate. In due course, she filed a formal complaint; a jury found that Ricker was her father but that he was never validly married to her mother; and the trial court denied her claim.

In the Court of Appeals, appellant contended that she was entitled to inherit even if she was illegitimate because § 42 was unconstitutional, and also that she was entitled to be legitimated on various theories. The appellate court rejected all her arguments.[4]

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[3] "Under the rule of *Winn* v. *Lackey*, [618 S. W. 2d 910 (Tex. Civ. App. 1981)] and the out-of-state cases cited therein, the equal protection argument fails as *Trimble* v. *Gordon*, 430 U. S. 762 (1977), has not been applied retroactively where the father died before the case came down and suit was filed afterwards." 682 S. W. 2d 697, 700 (Tex. Civ. App. 1984).

[4] In her jurisdictional statement, appellant raised several questions that relate to the legitimation issue. Because we hold that she is entitled to relief on her principal claim, and because the legitimation questions appear not to have been properly presented as federal questions, see Appellant's

II

Although the question presented in this case is framed in terms of "retroactivity," its answer is governed by a rather clear distinction that has emerged from our cases considering the constitutionality of statutory provisions that impose special burdens on illegitimate children. In these cases, we have unambiguously concluded that a State may not justify discriminatory treatment of illegitimates in order to express its disapproval of their parents' misconduct.[5] We have, however, also recognized that there is a permissible basis for some "distinctions made in part on the basis of legitimacy;"[6] specifically, we have upheld statutory provisions that have an evident and substantial relation to the State's interest in providing for the orderly and just distribution of a decedent's property at death. *Lalli* v. *Lalli*, 439 U. S. 259 (1978).[7]

Brief before the Texas Court of Appeals (presenting only the *Trimble* question as a federal constitutional issue), we do not reach the legitimation issue.

[5] "It is true, of course, that the legal status of illegitimacy, however defined, is, like race or national origin, a characteristic determined by causes not within the control of the illegitimate individual, and it bears no relation to the individual's ability to participate in and contribute to society. The Court recognized in *Weber* [v. *Aetna Casualty*, 406 U. S. 164 (1972)] that visiting condemnation upon the child in order to express society's disapproval of the parents' liaisons

"'is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual—as well as an unjust—way of deterring the parent.' 406 U. S., at 175. (Footnote omitted.)"

Mathews v. *Lucas*, 427 U. S. 495, 505 (1976).

[6] *Ibid.*

[7] "The presence in this case of the State's interest in the orderly disposition of a decedent's property at death distinguishes it from others in which that justification for an illegitimacy-based classification was absent. *E. g.*, *Jimenez* v. *Weinberger*, 417 U. S. 628 (1974); *Gomez* v. *Perez*, 409 U. S. 535 (1973); *Weber* v. *Aetna Casualty & Surety Co.*, 406 U. S. 164,

The state interest in the orderly disposition of decedents' estates may justify the imposition of special requirements upon an illegitimate child who asserts a right to inherit from her father, and, of course, it justifies the enforcement of generally applicable limitations on the time and the manner in which claims may be asserted. After an estate has been finally distributed, the interest in finality may provide an additional, valid justification for barring the belated assertion of claims, even though they may be meritorious and even though mistakes of law or fact may have occurred during the probate process. We find no such justification for the State's rejection of appellant's claim in this case.

The Texas Courts have relied on *Trimble* v. *Gordon*, *supra*, as a basis for holding § 42 of the 1955 probate code invalid in cases that were pending on April 26, 1977—the date *Trimble* was decided. See *Winn* v. *Lackey*, 618 S. W. 2d 910 (Tex. Civ. App. 1981); *Lovejoy* v. *Lillie*, 569 S. W. 2d 501 (Texas Civ. App. 1978). Although the administration of Prince Ricker's estate was in progress on that date, the court refused to apply *Trimble* because appellant's claim was not asserted until later. Thus, the test applied by the Texas Court resulted in the denial of appellant's claim because of the conjunction of two facts: (1) her father died before April 26, 1977, and (2) her claim was filed after April 26, 1977.

There is nothing in the record to explain why these two facts, either separately or in combination, should have prevented the applicability of *Trimble*, and the allowance of appellant's claim, at the time when the trial court was required

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170 (1972); *Levy* v. *Louisiana*, 391 U. S. 68 (1968)." (Opinion of POWELL, J.). 439 U. S. at 268, n. 6.

Although the dissenters did not believe the state interest was sufficient to support the particular statute before the Court in that case, they agreed with the basic proposition that this state interest may justify some differential treatment—"New York might require illegitimates to prove paternity by an elevated standard of proof," *id.*, at 279 (BRENNAN, J., dissenting).

to make a decision. At that time, the governing law had been established: *Trimble* had been decided, and it was clear that §42 was invalid. The state interest in the orderly administration of Prince Ricker's estate would have been served equally well regardless of how the merits of the claim were resolved. In this case, then, neither the date of his death nor the date the claim was filed had any impact on the relevant state interest in orderly administration; their conjunction similarly had no impact on that state interest.

The interest in equal treatment protected by the Fourteenth Amendment to the Constitution—more specifically, the interest in avoiding unjustified discrimination against children born out of wedlock, see *Mathews* v. *Lucas*, *supra*, at 505—should therefore have been given controlling effect. That interest requires that appellant's claim to a share in her father's estate be protected by the full applicability of *Trimble* to her claim.[8]

The judgment of the Texas Court of Appeals is therefore reversed and the case is remanded to that court for further proceedings not inconsistent with this opinion.

It is so ordered.

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[8] In addition to concluding that *Trimble* did not apply, the Texas Court of Appeals stated, "even if the plaintiff could claim under section 42(b) as amended, her exclusion from the inheritance under that statute does not deny her constitutional equal protection since a rational state basis supports that legislation." 682 S. W. 2d, at 700. We read that statement, not as an alternative ground for the court's judgment, but as the rejection of an alternative ground for appellant's recovery. To read it as assuming that the amended statute defeated appellant's claim, even if *Trimble* applied, would, in the context of this case and the amended statute's requirements, raise serious due process questions.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 27, 1986

No. 85-755 Reed v. Campbell

Dear John,

Please join me.

Sincerely,

Sandra

Justice Stevens

Copies to the Conference

May 27, 1986

85-755 Reed v. Campbell

Dear John:

Please join me.

Sincerely,

Justice Stevens

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 27, 1986

85-755 - Reed v. Campbell

Dear John,

Please join me.

Sincerely yours,

Justice Stevens

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 28, 1986

Re: 85-755 - Reed v. Campbell

Dear John:

Please join me.

Sincerely,

WHR

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 28, 1986

No. 85-755

Reed v. Campbell

Dear John,

I agree.

Sincerely,

Bill

Justice Stevens

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 28, 1986

Re: No. 85-755, Reed v. Campbell

Dear John:

Please join me.

Sincerely,

Harry

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 4, 1986

Re: No. 85-755-Reed v. Campbell

Dear John:

Please join me.

Sincerely,

T.M.

Justice Stevens

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 4, 1986

85-755 - Reed v. Campbell

Dear John:

I join.

Regards,

WEB

Justice Stevens

Copies to the Conference

85-755 Reed v. Campbell (Anne)

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1st draft 5/27/86
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SOC 5/27/86
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