

11/28/00

SUPREME COURT OF LOUISIANA

No. 00-CC-0790

EVELYN JENKINS, ET AL

Versus

MANGANO CORPORATION, ET AL

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
FIFTH CIRCUIT, PARISH OF JEFFERSON

JOHNSON, J., dissenting

The majority has, in effect, denied Melvin Jenkins' survivors the right to bring any claim for his alleged wrongful death. In a move designed to avoid liability all together, defendants waited until the purported daughter's claim had prescribed, then filed an exception of no right of action to bar the mother's claim.

I agree with the trial court's determination that the evidence offered was insufficient to establish that the deceased had informally acknowledged Teresha Shaffer as his daughter. Pursuant to the Louisiana Civil Code, parents of an illegitimate child may establish filiation by making a declaration before a notary public and two witnesses. LSA-C.C. art. 203. Additionally, a child who has not been formally acknowledged may establish filiation by instituting a civil proceeding. LSA-C.C. art. 208. Louisiana Civil Code Article 209 provides:

B. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged deceased parent by clear and convincing evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this article.

C. The proceeding required by this article must be brought *within one year of the death of the alleged parent or within nineteen years of the child's birth*, whichever first occurs. This time limitation shall run against all persons, including minors and interdicts. If the proceeding is not timely instituted, the child may not thereafter establish his filiation, except for the sole purpose of establishing the right to recover damages under Article 2315. A proceeding for that purpose may be brought within one year of the death of the alleged parent and may be cumulated with the action to recover damages.

(Emphasis added).

In this case, the purported daughter has never instituted an action to establish filiation. Two years after Melvin Jenkins' death and twenty-six years after Teresha's Shaffer's birth, defendants have asserted filiation on Teresha's behalf. Defendants offered as evidence the testimony of Teresha and her mother, who both testified that the deceased recognized Teresha as his daughter by visiting her and allowing her to visit him during the summers. Defendants ask us to give great weight to the testimony of Teresha and her mother that Teresha received Social Security benefits until her eighteenth birthday. However, no social security records were submitted into evidence and made part of the record.

I believe that the unsupported testimony of the purported daughter and her mother is insufficient to prove by clear and convincing evidence that Mr. Jenkins informally acknowledged Teresha as his daughter. Furthermore, LSA-C.C. art. 209(C) requires an illegitimate child to institute proceedings to establish filiation "within one year of the death of the alleged parent or within nineteen years of the child's birth, whichever first occurs." Thus, Teresha's claim has prescribed. In allowing defendants to assert filiation on Teresha's behalf, the majority has given defendants greater rights than she would have.

For the foregoing reasons, I respectfully dissent.