

# SUPREME COURT OF LOUISIANA

*No. 97-C-0785*

ALANA SUDWISCHER

Versus

ESTATE OF PAUL C. HOFFPAUIR

LEMMON, J., Dissenting

The majority notes that while a legislative amendment depriving an illegitimate child of her right to prove filiation would be substantive and prospective only, an amendment increasing the degree of proof necessary to prove filiation is procedural and may be applied retroactively. I disagree. Before the amendment, this plaintiff had the right to inherit from her alleged father if her evidence of filiation met the preponderance of the evidence standard (which it arguably did). The legislative amendment changing the burden of proof was certainly substantive to her because it cost her the right to inherit. If the party bearing the burden of proof would have the right to inherit under the pre-amendment statute, but no longer has that right under the amended statute, what could be more substantive? A legislative increase in the quantum of necessary evidence is analogous to adding an additional element to the claimant's cause of action, which cannot conceivably be construed as non-substantive.

If the amendment in the present case had shifted the burden of proof to the defendant, certainly the succession would be here screaming that the change was substantive. I fail to see the difference between an amendment shifting the burden of proof to the defendant and an amendment maintaining the burden of proof on the plaintiff but increasing (or doubling or tripling) that burden of proof. A law which

makes the enforcement of a right dependant upon the production of certain evidence or upon proof of a specified amount or type of evidence logically is a substantive law.

The plaintiff in the present case did not meet her burden of proof under the clear and convincing standard applied by the majority. However, since the amendment is substantive, the pre-amendment burden of proof should apply. I would remand the case to the trial court to apply the preponderance of the evidence standard in this bench trial; alternatively, this court should review the record under the proper standard.