Study L-661 August 12, 2002

Memorandum 2002-35

Inheritance Involving Nonmarital Child: *Griswold* Case

BACKGROUND

The Commission takes responsibility for continuing review and maintenance of statutes enacted on its recommendation. One statute enacted on Commission recommendation seems to have required more fine tuning than most — Probate Code Section 6452 (inheritance from or through a child born out of wedlock).

Last year a California Supreme Court case highlighted a problematic application of the section. The court in *Estate of Griswold*, 25 Cal. 4th 904, 24 P.3d 1191, 108 Cal. Rptr. 2d 165 (2001), buttressed by Law Revision Commission materials, reluctantly concluded that the statute is clear on its face. The court not too subtly observed that "the Legislature remains free to reconsider the matter and may choose to change the rules of succession at any time." 108 Cal. Rptr. 2d at 181. The concurring opinion of Justice Brown was more blunt: "Only the Legislature may make the appropriate revisions. I urge it to do so here." *Id.* A copy of the case is attached as an Exhibit.

The Commission reviewed this matter last year and concluded to enlist student resources to research it, and work it into the Commission's agenda on a low priority basis. Our student legal intern this summer — Ellen Nudelman — has researched the matter; portions of this memorandum are based substantially on her work.

THE PROBLEM

If a person dies without having made a will or other instrument disposing of property, the property passes by intestate succession. California statutes provide an intestate succession scheme, indicating the persons entitled to inherit. Prob. Code § 6400 *et seq.* Depending on whether the property is community or separate, it may pass in various percentages to the surviving spouse and children of the decedent, if any. Prob. Code § 6401.

If the decedent leaves a surviving spouse but no child, things start to get interesting. A share of the decedent's separate property may pass up the line to parents of the decedent and, if the parents have predeceased their child, through the parents to siblings of the decedent. Prob. Code § 6402. But what is a "parent" for this purpose? There are many complexities involving adoptive parents, foster parents, and proof of natural parentage. Probate Code Sections 6450 through 6455 address these issues at length.

Let us assume for the sake of simplicity that there are only natural parents — no adoption or other complications to cloud matters. The relationship of parent and child will ordinarily exist between a natural parent and child for purposes of intestate succession. Prob. Code § 6450(a).

However, in the case of a child born out of wedlock, Section 6452 limits the ability of the natural parent to inherit from the child, and of others to inherit through the natural parent. Section 6452 imposes two additional requirements:

> 6452. If a child is born out of wedlock, neither a natural parent nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied:
>
> (a) The parent or a relative of the parent acknowledged the child.
>
> (b) The parent or a relative of the parent contributed to the support or the care of the child.

GRISWOLD CASE

In *Griswold*, the decedent Denis Griswold died intestate leaving a modest estate and a surviving spouse, but no children or parents. The surviving spouse, as personal representative and sole heir, applied to the court for an order of distribution of the estate.

Meanwhile, an heir tracer became interested in the Griswold estate. The heir tracer discovered that Griswold had been born out of wedlock and that his natural father was John Draves. Although Draves was dead, he had two children of a subsequent marriage. Neither of the Draves children knew of Griswold's existence during Griswold's lifetime (and would not have known of his existence after his death, were it not for the good graces of the heir tracer). The heir tracer obtained from the Draves children an assignment of any interest they might have in the Griswold estate, and thereupon filed an objection to distribution of

Griswold's estate to his surviving spouse, on the theory that the heir tracer, as assignee, was entitled to a 50% share.

While ordinarily the half siblings of a decedent would have a right to inherit a share of a decedent's estate through their predeceased common parent, Probate Code Section 6452 limits that right where the decedent is an out of wedlock child of the common parent. The issue in *Griswold* was whether Draves satisfied the limitations of Section 6452, thereby enabling his children (and in turn their assignee) to inherit from Griswold.

Section 6452 contains two limitations — the parent (or a relative of the parent) must have (1) acknowledged the child and (2) contributed to the child's support or care. In *Griswold,* it appeared that Draves had acknowledged in a 1941 child support proceeding that he was the father, and the court had ordered child support in the amount of $5 weekly. Draves complied with the court order and paid the required amount to the court clerk for 18 years. There is no evidence of any other contact or involvement between Draves and Griswold, or between the subsequent Draves children and Griswold.

The Supreme Court was compelled to the conclusion that the conditions of Section 6452 had been satisfied, despite the surviving spouse's argument that more should have been demanded under the requirement of Section 6452 that the parent "acknowledged" the child. "We do not disagree that a natural parent who does no more than openly acknowledge a child in court and pay court-ordered child support may not reflect a particularly worthy predicate for inheritance by that parent's issue, but section 6452 provides in unmistakable language that it shall be so." 108 Cal. Rptr. 2d at 181.

Justice Brown's concurrence argues that Section 6452 fails to accomplish the purpose of the intestate succession laws, which is to effectuate the likely intent of a decedent.

> I doubt most children born out of wedlock would have wanted to bequeath a share of their estate to a "father" who never contacted them, never mentioned their existence to his family and friends, and only paid court-ordered child support. I doubt even more that these children would have wanted to bequeath a share of their estate to that father's other offspring. Finally, I have *no* doubt that most, if not all, children born out of wedlock would have balked at bequeathing a share of their estate to a "forensic genealogist."

108 Cal. Rptr. 2d at 181.

Justice Brown goes on to suggest a solution. "I believe our laws of intestate succession should allow a parent to inherit from a child born out of wedlock only if the parent has some sort of parental connection to that child. For example, requiring a parent to treat a child born out of wedlock as the parent's own before the parent may inherit from that child would prevent today's outcome." *Id.* She cites Mississippi law, under which a father must "openly treat" a child born out of wedlock "as his own" in order to inherit from that child. See, e.g., *Bullock v. Thomas*, 659 So. 2d 574, 577 (Miss. 1995).

LEGISLATIVE HISTORY OF SECTION 6452

Before the Law Revision Commission began its study of probate law in the early 1980's California law imposed no restrictions on inheritance by or through the parent of a nonmarital child. Under the statutory and common law at that time (and in a majority of states today), a decedent's nonmarital birth did not impact inheritance by or through the decedent's natural parents.

In 1982, the Commission recommended enactment of comprehensive legislation to govern wills, intestate succession, and related matters. The Commission stated two principal policy goals:

> The proposed law will make probate more efficient and expeditious. It will provide rules that are more likely to carry out the intent of the testator or, if a person dies without a will, the intent a decedent without a will is most likely to have had.

Wills and Intestate Succession, 16 Cal. L. Revision Comm'n Reports 2301, 2319 (1982).

Although the Uniform Probate Code contained a provision limiting inheritance from a nonmarital child, and although the Commission drew many of the provisions of the proposed legislation from the Uniform Probate Code, the Commission's 1982 recommendation did not include a provision limiting inheritance from a nonmarital child. That concept first surfaced during the legislative process in the form of Probate Code Section 6408.5, the predecessor of today's Section 6452. The evolution of that provision has been rocky.

Former Section 6408.5

1983 Enactment

As originally enacted in 1983, Section 6408.5(b) provided:

> (b) Neither a parent nor a relative of a parent inherits from or through a child on the basis of the relationship of parent and child between that parent and child if the child was born out of wedlock and has **neither** been acknowledged by **nor** supported by that parent.

1983 Cal. Stat. ch. 842, § 55 (emphasis added).

Because this was not part of the Commission's original recommendation, the policy behind it is not mentioned in the Commission's report. The Commission's after the fact Comment is unenlightening; it merely parrots the wording of the statute.

1984 Amendment

A defect in the drafting of the provision was immediately discovered. As enacted, the section inadvertently permitted inheritance if the parent had **either** acknowledged the child **or** supported the child. Unless the parent did both, inheritance from or through the child by a parent or relative of a parent would not be appropriate.

The provision was amended (and renumbered) in 1984 to require both acknowledgment and support of a nonmarital child in order for a natural parent to be eligible to inherit from the child. In its revised form, Section 6408.5(c) then read:

> (c) If a child is born out of wedlock, neither a parent nor a relative of a parent inherits from or through a child on the basis of the relationship of parent and child between that parent and child unless the parent **both** (1) acknowledged the child **and** (2) contributed to the support or the care of the child.

1984 Cal. Stat. ch. 892, §42 (emphasis added).

1985 Amendment

The Commission was not through yet. The following year the Commission did further work on the provision:

> (c) If a child is born out of wedlock, neither a parent nor a relative of a parent **(except for the issue of the child or a natural brother or sister of the child or the issue of that brother or sister)** inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied:

(1) The parent **or a relative of the parent** acknowledged the child.

(2) The parent **or a relative of the parent** contributed to the support or the care of the child.

1985 Cal. Stat. ch. 982, § 22 (emphasis added).

The Commission explained that (1) the provision should not preclude the issue and siblings of the child from inheriting (regardless of the behavior of the parent), and (2) the provision should be expanded to cover the case where a grandparent acknowledges the child as a grandchild and assumes the responsibility for the support or the care of the child. *Effect of Adoption or Out of Wedlock Birth on Rights at Death*, 18 Cal. L. Revision Comm'n Reports 289 (1986).

Life as Section 6408

In 1990, Section 6408.5 was repealed altogether, and began a new life as subdivision (d) of Section 6408. This was part of a recodification and consolidation of the entire Probate Code, completing the Commission's decade long overhaul of the code. 1990 Cal. Stat. ch. 79, § 14.

The provision's life as a part of Section 6408 was brief. In 1993 the Commission recommended that Section 6408 be repealed and its subdivisions split into separate provisions. The nonmarital inheritance provision became Section 6452, where it currently resides. 1993 Cal. State. ch. 529, § 5.

Section 6452

1993 Amendment

Besides renumbering the provision, the 1983 amendment also tweaked the exception for inheritance by the issue and siblings of a nonmarital child: "except for ~~the issue of the child or a natural~~ a brother or sister of the child or the issue of that brother or sister." 1993 Cal. State. ch. 529, § 5.

The Commission's Comment explained that the reference to the child's issue is unnecessary, since a person's issue have a direct inheritance right under other statutes. The reference to a "natural" sibling was deleted to avoid the implication that an adoptive sibling might not inherit. *Parent and Child Relationship for Intestate Succession*, 23 Cal. L. Revision Comm'n Reports 991, 1004-05 (1993).

1996 Amendment

The Commission grappled with the provision again in 1996. The Commission decided that Section 6452's exception for inheritance by siblings creates an

undesirable risk that the estate of a deceased nonmarital child will be claimed by siblings with whom the decedent had no contact during lifetime and of whose existence the decedent was unaware. *Inheritance From or Through Child Born Out of Wedlock*, 26 Cal. L. Revision Comm'n Reports 13 (1996).

The Commission cited as an instance the case of *Estate of Corcoran*, 7 Cal. App. 4th, 9 Cal. Rptr. 475 (1993). The facts in that case were remarkably similar to the facts in *Griswold*. In *Corcoran* the father had a nonmarital daughter (Hazel); the father later married and had two children. When Hazel died, one of her half siblings, of whom she was unaware, claimed and was granted a right to inherit from her through their common father. The Commission noted:

> Intestate succession law provides for a distribution that the average decedent probably would have wanted if an intention had been expressed by will. It is unlikely an out-of-wedlock child would include siblings in a will in circumstances where the parent or relative never acknowledged, supported, or cared for the out-of-wedlock child.

Inheritance From or Through Child Born Out of Wedlock, 26 Cal. L. Revision Comm'n Reports 13, 18 (1996).

The legislation removing the sibling inheritance exception to Section 6452 was enacted, leaving the provision in its current form. 1996 Cal. Stat. ch. 862. But the Commission's thought that it could cure the *Corcoran* problem simply by removing the reference to siblings was proved by *Griswold* to be wrong. Although the surviving spouse argued that the 1996 amendment demonstrated legislative intent not to allow unknown half siblings to inherit, the court disagreed. The *Griswold* court pointed out that if the Legislature had wanted to preclude inheritance by unknown half siblings, it could have done that directly. But it did not. 108 Cal. Rptr. 2d at 176-77.

Perspective

The recitation of this legislative history is a sad tale. The problem stems in part from the fact that, at least initially, the matter was simply injected into the statutes on the fly, without the Commission's standard deliberative approach. Part of the problem also lies in the fact that the provision may be perceived as fair or unfair depending on the particular fact situation to which it is applied.

In any event, there is a cautionary lesson here as we once again prepare to jump into the thicket.

What do other jurisdictions do about this issue?

"Openly Treated" Standard

Mississippi Statute

Justice Brown's opinion in *Griswold* refers, for example, to Mississippi law. The Mississippi statute states, in part:

> The natural father of an illegitimate and his kindred shall not inherit:
>
> (i) From or through the child unless the father has openly treated the child as his, and has not refused or neglected to support the child.

Miss. Code Ann. § 91-1-15(3)(d)(i) (2001).

In Mississippi, a claimant has the burden of proving by a preponderance of the evidence that the father openly recognized the nonmarital child and did not refuse or neglect child support. *Woodall v. Johnson*, 552 So. 2d 1065, 1068 (Miss. 1989).

Other "Openly Treated" States

Other states have adopted statutes similar to the Mississippi provision. For example, the law in Alabama states:

> In cases not covered by subdivision (1) of this section, a person born out of wedlock is a child of the mother. That person is also a child of the father, if ….
>
> b. The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, but the paternity established under this paragraph is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

Ala. Code § 43-8-48(2) (2001).

A number of other states — Delaware, Idaho, Kentucky, Maine, Montana, Nebraska, South Carolina, Tennessee, and Virginia — have similarly worded statutes. See Del. Code Ann. tit. 12, § 508(2) (2001); Idaho Code § 15-2-109(b) (2001); Ky. Rev. Stat. Ann. § 391.105(1)(c) (2001); Me. Rev. Stat. Ann. tit. 18, § 2-109(2) (2001); Mont. Rev. Stat. § 474.060(2) (2001); Neb. Rev. Stat. Ann. § 30-

2309(2) (2001); S.C. Code Ann. § 62-2-109(2) (2001); Tenn. Code. Ann. § 31-2-105(a)(2)(2001); Va. Code Ann. § 64.1-5.1(3) (2001).

Gender Neutrality and the Uniform Probate Code

Most of the "openly treated" statutes impose the requirement only on a father, not on a mother. This is probably the consequence of an early version of the Uniform Probate Code. Monopoli, *"Deadbeat Dads": Should Support and Inheritance Be Linked?*, 49 U. Miami L. Rev. 257, 271 (1994).

The Uniform Probate Code provision was revised in 1990 to expand application of the rule to both fathers and mothers. The current version of the Uniform Probate Code, Section 2-114(c) provides:

> Inheritance from or through a child by either natural parent or his [or her] kindred is precluded unless that natural parent has openly treated the child as his [or hers], and has not refused to support the child.

It should be noted that this version applies as well to both marital and nonmarital natural parents. See § 2-114(a); see also Monopoli, 49 U. Miami L. Rev at 271.

Arizona has adopted a gender neutral form of the law, parallel to the Uniform Probate Code. The Arizona statute provides:

> Inheritance from or through a child by either natural parent or the natural parent's kindred is precluded unless that natural parent has openly treated the child as a natural child and has not refused to support the child.

Ariz. Rev. Stat. § 14-2114(c) (2001). Other states that have adopted the gender neutral Uniform Probate Code version include Montana and Nebraska. Monopoli, 49 U. Miami L. Rev. at 272.

The Georgia Experience

The gender neutrality issue is significant. The Georgia intestacy statute was struck down by the court and eventually repealed by the legislature because of the statute's exclusive focus on fathers.

Section 53-2-4(b)(2) of the Georgia Annotated Code provided:

> [N]either the father nor any child of the father nor any other paternal kin shall inherit from or through a child born out of wedlock if it shall be established by a preponderance of evidence

> that the father failed or refused openly to treat the child as his own or failed or refused to provide support for the child.

In *Rainey v. Chever*, the Georgia Supreme Court held that the Georgia statute is unconstitutional because it "creates a gender-based classification in that only fathers of children born out of wedlock must openly treat the child as their own and provide support for the child in order to inherit from the child." 270 Ga. 519, 520, *cert. denied*, 527 U.S. 1044 (1999); see generally Long, Rainey v. Chever: *Expanding a Natural Father's Right to Inherit from His Illegitimate Child*, 51 Mercer L. Rev. 761 (2000). The court further stated,

> Although the State has an important interest in encouraging fathers to take responsibility for children born out of wedlock, the State has an equally important interest in encouraging the identical behavior in mothers. Therefore, the State interest proffered to support subsection (b)(2) does not justify a classification based solely on the gender of the parent. We reject the argument that mothers are less likely than fathers to abandon children born out of wedlock as reliant on stereotypes and overbroad generalizations.

Rainey, 270 Ga. at 520.

The Supreme Court denied certiorari to review the decision to strike down the Georgia law. 527 U.S. 1044 (1999). Chief Justice Rehnquist, Justice Thomas, and Justice Scalia dissented to the denial of certiorari. Thomas's dissent points out:

> [T]he importance of this decision cannot be gainsaid. A variety of States have adopted similar legislation requiring fathers (but not mothers) to support their children born out of wedlock as a condition of inheriting from their estates.... The decision of the Supreme Court of Georgia, resting on federal constitutional grounds, calls the continued validity of these statutes into doubt.

Id. at 1048.

At least in Georgia, the gender based distinction has been abolished. On May 16, 2002, Georgia House Bill 639 was signed into law to repeal, among other statutes, Section 53-2-4(b)(2) of the Georgia Code.

Abandonment Standard

A few states have dealt with the unfair consequence of a parent inheriting from the child when the parent has done little for the child by applying an abandonment standard. Such a standard typically would apply to both marital

and nonmarital parents. Monopoli, 49 U. Miami L. Rev. at 272. For example, a Connecticut intestacy provision provides, in part:

> If there are no children or any legal representatives of them, then, after the portion of the husband or wife, if any, is distributed or set out, the residue of the estate shall be distributed equally to the parent or parents of the intestate, provided no parent who has abandoned a minor child and continued such abandonment until the time of death of such child, shall be entitled to share in the estate of such child or be deemed a parent for the purposes of subdivisions (2) to (4) ….

Conn. Gen. Stat. § 45a-439(a)(1) (2001).

Other states that have prohibited inheritance in the case of abandonment are New York, North Carolina, Ohio, and Virginia. See N.Y. Est., Powers & Trusts Law § 4-1.4(a) (Consol. 2002) (denying inheritance if the parent abandoned the child while child is under the age of twenty-one, unless the parental relationship is subsequently resumed and continues until the death of the child); N.C. Gen. Stat. § 31A-2 (2001) (imposing a willful abandonment standard, with an exception for resuming the parental relationship at least one year before the child's death); Ohio Rev. Code Ann. § 2105.10; Va. Code Ann. § 64.1-16.3(B) (2001) (imposing a willful desertion or abandonment standard).

Ohio provides a definition of abandonment:

> "Abandoned" means that a parent of a minor failed without justifiable cause to communicate with the minor, care for him, and provide for his maintenance or support as required by law or judicial decree for a period of at least one year immediately prior to the date of the death of the minor.

Ohio Rev. Code Ann. § 2105.10(B).

Other Standards

States that impose an openly treated requirement or a nonabandonment requirement for inheritance are in a minority. The intestacy statutes of a majority of states do not link inheritance rights to behavior. (The major exception is the slayer rule which prohibits murderers from inheriting from their victims.)

California has made a step towards an equitable system with the current acknowledgment and support requirements for inheritance. At issue is whether the policy should be made stronger to prohibit "unworthy" parents and their

kindred from inheriting when they have not treated the decedent as part of their family.

POSSIBLE AMENDMENT OF SECTION 6452

In response to *Griswold*, the Commission may wish to consider six alternative treatments of Probate Code Section 6452:

(1) Substitute a nonabandonment requirement for the acknowledge and support requirement.
(2) Substitute an openly treated requirement for the acknowledge and support requirement.
(3) Augment the acknowledge and support requirement with a communication or contact requirement.
(4) Expand the applicable requirement so that it covers inheritance by marital as well as nonmarital parents.
(5) Do nothing.
(6) Repeal Section 6452.

Policy Goals in Intestate Succession

The main policy goals of intestate succession law are to carry out a general presumed intention of the decedent and to make probate more efficient and expeditious. *Wills and Intestate Succession*, 16 Cal. L. Revision Comm'n Reports 2301, 2319 (1982).

Other policy goals that come into play when a nonmarital child is involved include punishment of nonmarital parents for poor parental behavior and deterrence of other nonmarital parents from engaging in such behavior. In fact, current Section 6452 can be viewed as punishing a parent for not acknowledging and supporting the child. See Monopoli, 49 Miami L. Rev. at 263.

The deterrent effect of intestate succession law is dubious. Given the relative infrequency of a child dying before its parents, a parent is unlikely to change its behavior based on the possibility the parent will inherit from the child. See Monopoli, 49 Miami L. Rev. at 281.

A more significant factor is a moral one — society's perception of the parent's "worthiness" in claiming the inheritance. At least for the *Griswold* court, "a natural parent who does no more than openly acknowledge a child in court and pay court-ordered child support may not reflect a particularly worthy predicate for inheritance by that parent's issue." 108 Cal. Rptr. 2d at 181. The Commission

in the past has also remarked on the "inequity" of a parent who has not assumed parental responsibilities to inherit from the nonmarital child.

It is also worth noting that not all cases involve a contest between the surviving spouse of a nonmarital child and the child's half-siblings. If the child leaves no spouse or children, and if the statute precludes inheritance by or through the nonmarital parents, the state stands to take the property by escheat. The staff does not believe this fact should be allowed to influence the development of rules limiting inheritance by or through nonmarital parents.

Substitution of "Abandonment" Standard

The Commission early on investigated whether to substitute an abandonment standard for the acknowledge and care for standard of existing law. A 1983 staff memorandum concluded:

> [I]t would be inappropriate to use an abandonment standard for inheritance purposes. It has been held that a showing that the mother voluntarily relinquished custody of the child to the father when the child was 4, infrequently visited and communicated with the child, and never contributed to the child's support, did not establish abandonment for the purpose of Civil Code Section 206.5. The court held that to have abandonment, there must be an intent to abandon. Stark v. Alameda, 182 Cal. App. 2d 20, 23-24, 5 Cal. Rptr. 839 (1960).
>
> The staff is of the view that there are cases short of abandonment where it would be inequitable to permit a parent who has failed to live up to parental responsibilities to inherit from a child born out of wedlock.

Memo. 84-2, pp. 2-3 (Nov. 22, 1983).

There is also an administration of justice preference for the acknowledge and support requirement over an abandonment standard. The staff analysis noted:

> In the out-of-wedlock case, there is the additional danger of fraud: One not the parent of the child may come forward to claim an intestate share if the estate is substantial. The requirements of (1) acknowledgment of the child and (2) support tend to minimize the danger of fraud. Accordingly, the staff recommends … against using the language of abandonment.

Id. at p. 3.

These considerations have not changed. The staff continues to disfavor abandonment as the standard for limiting inheritance from a nonmarital child.

Substitution of "Openly Treated" Standard

There are advantages and disadvantages to the "openly treated" standard for inheritance from a nonmarital child.

Benefits

Requiring a parent to openly treat the nonmarital child as the parent's own would effectuate the probable intention of the decedent. After all, a decedent would undoubtedly not want a lifetime of earnings and possessions to be distributed to a parent who rarely had contact with the decedent, or to a half sibling of whom the decedent had been unaware. It should be noted, however, even this intention cannot be certain. Some studies indicate that "children continue to love and bond with parents who have badly abused and/or abandoned them." Monopoli, 49 Miami L. Rev. at 277.

Nonetheless, it is unlikely that a child will love and bond with a parent or half sibling whom the child never met and never knew existed, as in *Griswold*. It is possible to make a fair estimation of the intention the decedent would have had in many cases. If the parent does establish a tie with the nonmarital child and treats the child as the parent's own, it is more likely that the child will have met half siblings or had some communication with them. The goal of the openly treated standard is for the child to be considered part of the family, with the integration of family members that entails.

Detriments

Mandating that a parent openly treat the child as the parent's own has significant drawbacks. In a contested case the fact of "open treatment" could not be proved simply but would require a court inquiry into the circumstances. It is worth noting, though, that it is not an ordinary sequence of events for a child to predecease its parents. Although an openly treated standard would require more fact finding than the acknowledgment standard, this type of case is not likely to impose a substantial burden on the court system.

The nebulous openly treated standard also invites inconsistent application from judge to judge. Monopoli, 49 Miami L. Rev. at 292:

> Deviating from a purely status-based model raises questions regarding the amount of contact with the child that is adequate to prevent forfeiture by the father. Does being around for two years of the child's life, three visits a year, or a birthday and a Christmas card suffice?

It is not even clear that the openly treated standard would address the *Griswold* situation. Acknowledgment of parentage in open court, and regular payment of child support into court (all of which are a matter of public record), could well be viewed by many as "open treatment" of the child as the parent's own.

An effort could be made to formulate a statutory definition of open treatment. However, family values, morals, and politics about appropriate "parental responsibilities" are likely to clash in development of such a definition. There may be as many answers to the question of how much parental contact should suffice as there are parents in the state of California. And any definition developed is likely to be unsatisfactory in its application to many types of fact situations that will arise.

Augmentation of "Acknowledge and Support" Standard

The acknowledge and support standard in Probate Code Section 6452 is a pretty good one. It is easy to administer and provides a reasonable predicate for inheritance by a parent. Whatever else one may think of a parent's behavior, the fact that the parent acknowledged and supported the child is significant. Why not allow the parent to inherit if the child who the parent supported dies intestate?

The only identified deficiency in existing law is the possibility that a person unknown to the decedent could inherit from the decedent. But that is not unique to Section 6452. It is a standard feature of intestate succession law, and is not limited to nonmarital children. The Commission at one time in the development of California's intestate succession laws worried about the so-called "laughing heir" — a remote relative unknown to the decedent who, through default, becomes the ungrieving heir to a fortune. The Commission concluded that those things can happen, and the law should not try to somehow impose an arbitrary limit on inheritance by remote relatives or set up other preconditions to inheritance.

If the Commission were inclined to augment the acknowledge and support standard with some sort of communication or knowledge requirement, that would be possible to do. The question is, how much contact should be enough.

The *Griswold* court facilely suggests that, "had the Legislature intended to categorically preclude intestate succession by a natural parent or a relative of that parent who had no contact with or was unknown to the deceased child, it could

easily have so stated." 108 Cal. Rptr. 2d at 177. But simply barring those parents or relatives of parents who have had no contact with or are unknown to the decedent invites the undesirable result of allowing inheritance based on a single communication during a lifetime. We could add that to the statute, but would it be worth doing?

The statute could require that for a parent to inherit, the parent must have had more than minimum contacts or communications with the child. The burden of proof of contacts and communications would rest on the claimant.

Suppose the parent had some contact with the child, but the half siblings who now stand in line to inherit did not. Should the half siblings (or other potential heirs) be required also to have had more than minimum contacts or communications with the child? Probably not. The rights of the half siblings are derivative of the rights of the parent. If the parent is entitled to inherit, that should suffice.

Expansion of Standard to Marital Parents

Running through all this discussion is the nagging question, why should these prerequisites to inheritance apply only to a nonmarital child? Suppose the child's parents had been married; shouldn't they be required to acknowledge and support the child in order to inherit? or not abandon the child? or openly treat the child as their own? or have more than minimum contacts or communication with the child?

The practical answer may be that the likelihood of this sort of mistreatment is greater when the child is born out of wedlock than when the parents are married. But in fact a married parent can abandon a child just as readily as an unmarried parent.

The Uniform Probate Code's openly treated standard does not distinguish between marital and nonmarital parents — inheritance from or through a child by a natural parent (or the parent's kindred) is precluded unless the natural parent has openly treated the child as the parent's own. It makes no difference whether the parent was married or unmarried. A few states have adopted this rule, but it is not widespread.

One concern with such an expansion is that it injects a potential litigation issue into every case involving inheritance by or through a parent; it is not limited to the nonmarital situation. We do not have enough experience in the states that have adopted the Uniform Probate Code standard to know whether

there have been problems in practice. Presumably proof of open treatment would be relatively easy for the parent in most routine cases if the inheritance right is challenged.

If a marital parent is required to satisfy certain standards of behavior in order to inherit from that parent's child, where do we draw the line? Is it enough to say merely that the parent openly treated the child as the parent's own? Suppose the parent regularly abused and mistreated the child. What degree of child abuse would have to be proved before the parent is deemed unworthy to inherit from the child? This is a very slippery slope. By comparison, a nonmarital parent's benign neglect of the child might seem admirable rather than reprehensible.

While a theoretical argument can be made that Section 6452 ought to have broader scope, its limited application does not seem to have caused anyone any concern. Absent a clear need for expansion, it may be advisable to focus on the narrow issue that has been raised concerning a nonmarital child.

Leave Well Enough Alone

The acknowledge and support standard of Section 6452 appears to work well in most cases. It is easily administered and gives a rough measure of justice. It is an unusual case, such as *Griswold*, where a parent acknowledges and supports the child and yet there is no other contact, knowledge, or involvement of the parent or parent's family.

Should something more be required in any event? The fact of support by a parent establishes a pretty good moral basis for inheritance by the parent (or the parent's heirs if the parent predeceases the child). Even the minimal $5/weekly support paid in *Griswold* works out to $4695 in payments during the child's minority. (Multiply that number by twelve if you want to convert the 1941 *Griswold* support order into today's dollars.)

Just about any standard one might adopt can be made to look inappropriate given the right fact situation, short of simply giving the court discretion to do what seems fair and just. Careening from one standard to another will not be a panacea.

Given the difficulty we have had in developing the current statutory standard, with numerous fine tuning amendments, does it make sense to start down a new path? Will we be setting ourselves up for another course of tinkering with this provision?

A strong argument can be made for leaving the law unchanged, knowing that there will be an occasional case where the result may appear inequitable. But the law can never be perfect. And it's not clear that any other standard would be an improvement over existing law.

Repeal Section 6452?

Section 6452 has caused nothing but problems for the Commission from the beginning. After five efforts to improve it, the provision still appears to have problems, and the likelihood is that a sixth amendment will fare no better.

A quick look at the existing provision reveals other obvious problems that are bound to surface over time. What does it mean to acknowledge a child? *Griswold* was easy because there was a specific acknowledgment in court. But other cases will be messier — are there magic words required, and must they be made in a public forum, or will conduct suffice (such as setting up a college fund for the child)?

The support requirement is even more problematic. Suppose the parent supports the child for a while and then discontinues payments. Is the support requirement satisfied? The statute seems to say so, since it literally requires only that the parent have "contributed to" the support of the child. The Uniform Probate Code has perhaps a more sophisticated approach to this issue — it requires that the parent has "not refused" to support the child.

Lost in all this discussion is the other prong of Section 6452 — the parent must have contributed to support **or** "the care of" the child. If the parent babysat once when the child was an infant but otherwise refused to support or care for the child, is the statutory requirement satisfied? This and similar issues are obvious candidates for litigation under the statute as it exists, despite two decades of fine tuning.

It is also worth noting that, while a parent may be precluded from inheriting from a nonmarital child under Section 6452, the child is not precluded from inheriting from the parent. In fact, in the early years of this provision the Commission referred to it as the "one way inheritance" provision. One can debate the policies supporting the lack of parallelism, but it is undeniable that just as a parent may be unworthy to inherit from a child, the reverse may also be true (particularly in the not infrequent circumstance of elder abuse).

An argument can be made that this provision should never have been enacted to begin with. It is out of step with a majority of jurisdictions in this country. It

was enacted without the usual close scrutiny and circulation for comment that is the Commission's hallmark and a significant reason for the Commission's success. It has been an ongoing source of problems and will continue to be so in the future. It is moralistic and judgmental, yet the problems it addresses are relatively minor compared to other societal problems that could be addressed (such as child abuse by a marital parent). Perhaps the provision ought simply to be repealed.

On the other hand, despite its deficiencies, the statute attempts to address a situation (albeit minor) that does arise, and that strikes people as inequitable. Although states that have attempted to deal with it are in the minority, the modern trend as represented by the Uniform Probate Code is to address the matter. Nobody's suggesting the policy of the statute is wrong, only that the statute doesn't address all the problems. We have come this far; why turn back now?

STAFF RECOMMENDATION

Of the six alternatives examined, the staff favors either option (2) — substitute an openly treated requirement for the acknowledge and support requirement — or option (5) — do nothing.

Move to the Openly Treated Standard

The case for moving to the openly treated standard is made by Ellen Nudelman:

The Commission should consider amending Section 6452 to incorporate the requirement that a parent must openly treat the nonmarital child as its own in order to inherit from that child. This is the rule of Uniform Probate Code Section 2-114, which states:

> Inheritance from or through a child by either natural parent or his [or her] kindred is precluded unless that natural parent has openly treated the child as his [or hers], and has not refused to support the child.

We should recast the provision so that it is limited to a nonmarital child.

As Section 6452 is now written, the probable intention of the decedent is likely not carried out in cases such as *Griswold*. Because the numbers of these cases are small, the burden on the court system of coping with the nebulous

"openly treated" standard will not be significant. The benefit of promoting the likely intention of the decedent outweighs the detriment of judicial inefficiency.

From a normative perspective, the *Griswold* court may be correct that merely paying child support and acknowledging the child in court is not enough to merit an inheritance by the parent or the parent's kindred. Even if the openly treated standard would not deter a parent from ignoring the parent's nonmarital children, the law can make a statement that society's expectations for parents extend beyond paying court ordered child support.

Adoption of the openly treated standard would also be consistent with the Commission's practice of drawing from the Uniform Probate Code. The Uniform Probate Code "reflects contemporary thinking and generally is a clearer, simpler statement of the law." 16 Cal. L. Revision Comm'n Reports 2319 n. 7. In 1982, the Commission drew freely from the Uniform Probate Code, promoting "national uniformity in cases where a special local rule is not required." With respect to how unmarried parents treat their children, there is no apparent need to have a special California rule. The Commission noted in 1982 that,

> As a result of the mobility of contemporary society and the frequency of interstate property transactions, a decedent may leave property in several jurisdictions. Uniformity of the law of wills and intestate succession will help ensure that the decedent's intent is effectuated with a minimum disruption of the estate.

Id. at 2319 n. 10.

In light of the improved service to the likely intention of the decedent, the public policy in favor of maintaining parent-child contact, and the positive implications from drawing on Uniform Probate Code language, the Commission should consider requiring parents to openly treat their children as their own in order for the parent or the parent's relatives to inherit from the intestate child.

Do Nothing

The staff believes an equally strong argument can be made for not attempting to tweak the statute to accommodate the *Griswold* case. We have continually fussed with the wording of Probate Code Section 6452 since its enactment, yet cases still arise under which the standard of the law appears inappropriate. That will happen as well if the "openly treated" standard is adopted. There are obvious problems with such an open-ended standard. At least existing law provides an easily administered test that gives the right result in most cases.

We've had six shots at trying to get it right (original enactment plus five amendments); that's enough. No standard will ever achieve perfect justice; the existing statute is no worse than any other that has surfaced so far.

Conclusion

If the Commission decides to go for the openly treated standard, as suggested by *Griswold*, we would circulate the proposal for comment as a tentative recommendation, following our normal process. In that event, we would use the Uniform Probate Code version (or Arizona's more elegant restatement of it), but limit it to nonmarital children. In addition to putting us in line with most of the other jurisdictions that have attempted to deal with this problem, it would also cure Section 6452's problematic "support or care for" provision, which is fraught with ambiguity — litigation in waiting.

If the Commission decides not to propose any revision to Section 6452, should we also circulate that as a tentative recommendation? We don't ordinarily seek comment on actions we have decided not to take, but in this case the strong and pointed suggestion of the Supreme Court may warrant seeking additional feedback on the matter.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

24 P.3d 1191

25 Cal.4th 904

[904] **ESTATE of Denis H. GRISWOLD, Deceased.**

Norma B. Doner–Griswold, Petitioner and Respondent,

v.

Francis V. See, Objector and Appellant.

No. S087881.

Supreme Court of California.

June 21, 2001.

After husband died intestate and without issue, leaving estate consisting entirely of separate property, his surviving wife obtained letters of administration and petitioned for final distribution of estate property to herself as surviving spouse and sole heir. Heir finder, who had obtained an assignment of partial interest in estate from husband's half-siblings, filed objection to petition. The Superior Court, Santa Barbara County, No. B216236, Thomas P. Anderle. J., denied petition. Heir finder appealed. The Court of Appeal reversed. The Supreme Court granted review, superseding the opinion of the Court of Appeal. The Supreme Court, Baxter, J., held that: (1) voluntary admission of paternity by father of husband in foreign bastardy proceeding constituted an "acknowledgement" of parentage for purposes of inheritance by husband's surviving half siblings, and (2) foreign judgment of paternity constituted a court order entered during husband's lifetime that sufficiently established his alleged father as his "natural parent," for purposes of the probate proceeding.

Affirmed.

Brown, J., concurred with separate opinion.

Opinion, 94 Cal.Rptr.2d 638, superseded.

1. **Children Out-of-Wedlock ⇐12**

Father's voluntary admission of paternity in foreign bastardy proceeding constituted an "acknowledgement" of parentage for purposes of inheritance by his surviving half siblings in intestate estate proceeding on claim for property separate from that to which child's surviving spouse was entitled; although father and child never met nor communicated and half siblings did not learn of child's existence until after his death, there was no evidence that the father disclaimed the parent-child relationship after the proceeding to people aware of circumstances, or engaged in contrivances to prevent discovery of child's existence. West's Ann.Cal.Prob.Code § 6452.

2. **Statutes ⇐181(1), 184, 188**

In statutory construction cases, Supreme Court's fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute, and the Court will begin by examining the statutory language, giving the words their usual and ordinary meaning.

3. **Statutes ⇐181(2), 184, 188, 190, 217.4**

In statutory construction cases, if the terms of the statute are unambiguous, Supreme Court will presume the lawmakers meant what they said, and the plain meaning of the language governs, but if there is ambiguity, Supreme Court may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history; in such cases, the Court will select the construction that comports most closely with the apparent intent of the legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences.

4. **Descent and Distribution ⇐6**

Legislative intent is to make probate more efficient and expeditious.

5. **Statutes ⇐212.7**

Where legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, Supreme Court may presume that the legislature intended the same construction for the statute, unless a contrary intent clearly appears.

6. **Constitutional Law ⇐70.1(2)**

Supreme Court may not, under the guise of statutory interpretation, insert qualifying provisions not included in the statute.

7. **Children Out-of-Wedlock ⇐68**

Foreign judgment of paternity constituted a court order entered during father's lifetime that sufficiently established father as child's "natural parent," for purposes of subsequent probate proceeding involving property interest of child's half siblings; although all procedural requirements were not followed for establishing paternity under California Family Code, father voluntarily declared his paternity in court long before adoption of Uniform Parentage Act, an action under the Act would have addressed same issue, and there was no evidence that father had "confessed" paternity to avoid publicity of a jury trial. West's Ann.Cal.Prob.Code §§ 6452, 6453(b)(1); West's Ann.Cal.Fam.Code § 7630.

8. **Children Out-of-Wedlock ⇐68**

Valid judgment of paternity rendered in foreign state is generally binding on California courts if foreign state had jurisdiction over parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard.

9. **Children Out-of-Wedlock ⇐68**

A prior adjudication of paternity does not compromise a state's interests in the accurate and efficient disposition of property at death.

10. Descent and Distribution ⇐6

Succession to estates is purely a matter of statutory regulation, which cannot be changed by the courts.

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[897]Kitchen & Turpin, David C. Turpin, Santa Barbara, Law Office of Herb Fox and Herb Fox, Santa Barbara, for Objector and Appellant.

Mullen & Henzell and Lawrence T. Sorensen, Santa Barbara, for Petitioner and Respondent.

BAXTER, J.

Section 6452 of the Probate Code (all statutory references are to this code unless otherwise indicated) bars a "natural parent" or a relative of that parent from inheriting through a child born out of wedlock on the basis of the parent and child relationship unless the parent or relative "acknowledged the child" and "contributed to the support or the care of the child." In this case, we must determine whether section 6452 precludes the half siblings of a child born out of wedlock from sharing in the child's intestate estate where the record is undisputed that their father appeared in an Ohio court, admitted paternity of the child, and paid court-ordered child support until the child was 18 years old. Although the father and the out-of-wedlock child apparently never met or communicated, and the half siblings did not learn of the child's existence until after both the child and the father died, there is no indication that the father ever denied paternity or knowledge of the out-of-wedlock child to persons who were aware of the circumstances.

Since succession to estates is purely a matter of statutory regulation, our resolution of this issue requires that we ascertain the intent of the lawmakers who enacted section 6452. Application of settled principles of statutory [898]construction compels us to conclude, on this uncontroverted record, that section 6452 does not bar the half siblings from sharing in the decedent's estate.

FACTUAL AND PROCEDURAL BACKGROUND

Denis H. Griswold died intestate in 1996, survived by his wife, Norma B. Doner–Griswold. Doner–Griswold petitioned for and received letters of administration and authority to administer Griswold's modest estate, consisting entirely of separate property.

In 1998, Doner–Griswold filed a petition for final distribution, proposing a distribution of estate property, after payment of attorney's fees and costs, to herself as the surviving spouse and sole heir. Francis V. See, a self-described "forensic genealogist" (heir hunter) who had obtained an assignment of partial interest in the Griswold estate from Margaret Loera and Daniel Draves,[1] objected to the petition for final distribution and filed a petition to determine entitlement to distribution.

See and Doner–Griswold stipulated to the following background facts pertinent to See's entitlement petition.

Griswold was born out of wedlock to Betty Jane Morris on July 12, 1941 in Ashland, Ohio. The birth certificate listed his name as Denis Howard Morris and identified John Edward Draves of New London, Ohio as the father. A week after the birth, Morris filed a "bastardy com-

1. California permits heirs to assign their interests in an estate, but such assignments are subject to court scrutiny. (See § 11604.)

plaint"[2] in the juvenile court in Huron County, Ohio and swore under oath that Draves was the child's father. In September of 1941, Draves appeared in the bastardy proceeding and "confessed in Court that the charge of the plaintiff herein is true." The court adjudged Draves to be the "reputed father" of the child, and ordered Draves to pay medical expenses related to Morris's pregnancy as well as $5 per week for child support and maintenance. Draves complied, and for 18 years paid the court-ordered support to the clerk of the Huron County court.

Morris married Fred Griswold in 1942 and moved to California. She began to refer to her son as "Denis Howard Griswold," a name he used for the rest of his life. For many years, Griswold believed Fred Griswold was his father. At some point in time, either after his mother and Fred Griswold divorced in 1978 or after his mother died in 1983, Griswold learned that Draves was listed as his father on his birth certificate. So far as is known, Griswold made no attempt to contact Draves or other members of the Draves family.

Meanwhile, at some point after Griswold's birth, Draves married in Ohio and had two children, Margaret and Daniel. Neither Draves nor these two children had any communication with Griswold, and the children did not know of Griswold's existence until after Griswold's death in 1996. Draves died in 1993. His last will and testament, dated July 22, 1991, made no mention of Griswold by name or other reference. Huron County probate documents identified Draves's surviving spouse and two children—Margaret and Daniel—as the only heirs.

Based upon the foregoing facts, the probate court denied See's petition to determine entitlement. In the court's view, See had not demonstrated that Draves was Griswold's "natural parent" or that Draves "acknowledged" Griswold as his child as required by section 6452.

The Court of Appeal disagreed on both points and reversed the order of the probate court. We granted Doner–Griswold's petition for review.

Discussion

Denis H. Griswold died without a will, and his estate consists solely of separate property. Consequently, the intestacy rules codified at sections 6401 and 6402 are implicated. Section 6401, subdivision (c) provides that a surviving spouse's share of intestate separate property is one-half "[w]here the decedent leaves no issue but leaves a parent or parents or their issue or the issue of either of them." (§ 6401, subd. (c)(2)(B).) Section 6402, subdivision (c) provides that the portion of the intestate estate not passing to the surviving spouse under section 6401 passes as follows: "If there is no surviving issue or parent, to the issue of the parents or either of them, the issue taking equally if they are all of the same degree of kinship to the decedent...."

As noted, Griswold's mother (Betty Jane Morris) and father (John Draves) both predeceased him. Morris had no issue other than Griswold and Griswold himself left no issue. Based on these facts, See contends that Doner–Griswold is entitled to one-half of Griswold's estate and that Draves's issue (See's assignors, Margaret and Daniel) are entitled to the other half pursuant to sections 6401 and 6402.

2. A "bastardy proceeding" is an archaic term for a paternity suit. (Black's Law Dict. (7th ed.1999) pp. 146, 1148.)

Because Griswold was born out of wedlock, three additional Probate Code provisions—section 6450, section 6452, and section 6453—must be considered.

[910]As relevant here, section 6450 provides that "a relationship of parent and child exists for the purpose of determining intestate succession by, through, or from a person" where "[t]he relationship of parent and child exists between a person and the person's natural parents, regardless of the marital status of the natural parents." (*Id.*, subd. (a).)

Notwithstanding section 6450's general recognition of a parent and child relationship in cases of unmarried natural parents, section 6452 restricts the ability of such parents and their relatives to inherit from a child as follows: "If a child is born out of wedlock, neither a *natural parent* nor a relative of that parent inherits from or through the child on the basis of the parent and child relationship between that parent and the child unless both of the following requirements are satisfied: [¶] (a) The parent or a relative of the parent *acknowledged the child.* [¶] (b) The parent or a relative of the parent contributed to the support or the care of the child." (Italics added.)

Section 6453, in turn, articulates the criteria for determining whether a person is a "natural parent" within the meaning of sections 6450 and 6452. A more detailed discussion of section 6453 appears *post*, at part B.

It is undisputed here that section 6452 governs the determination whether Margaret, Daniel, and See (by assignment) are entitled to inherit from Griswold. It is also uncontroverted that Draves contributed court-ordered child support for 18 years, thus satisfying subdivision (b) of section 6452. At issue, however, is whether the record establishes all the remaining requirements of section 6452 as a matter of law. First, did Draves acknowledge Griswold within the meaning of section 6452, subdivision (a)? Second, did the Ohio judgment of reputed paternity establish Draves as the natural parent of Griswold within the contemplation of sections 6452 and 6453? We address these issues in order.

A. Acknowledgement

[1] As indicated, section 6452 precludes a natural parent or a relative of that parent from inheriting through a child born out of wedlock unless the parent or relative "acknowledged the child." (*Id.*, subd. (a).) On review, we must determine whether Draves acknowledged Griswold within the contemplation of the statute by confessing to paternity in court, where the record reflects no other acts of acknowledgement, but no disavowals either.

[2, 3] In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272, 105 Cal.Rptr.2d 457, 19 [911]P.3d 1196.) "We begin by examining the statutory language, giving the words their usual and ordinary meaning." (*Ibid.*; *People v. Lawrence* (2000) 24 Cal.4th 219, 230, 99 Cal.Rptr.2d 570, 6 P.3d 228.) If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. (*Day v. City of Fontana, supra*, 25 Cal.4th at p. 272, 105 Cal.Rptr.2d 457, 19 P.3d 1196; *People v. Lawrence, supra*, 24 Cal.4th at pp. 230–231, 99 Cal.Rptr.2d 570, 6 P.3d 228.) If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. (*Day v. City of Fontana, supra*, 25 Cal.4th at p. 272, 105 Cal.Rptr.2d 457, 19 P.3d

1196.) In such cases, we "'"select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences."'" (*Ibid.*)

Section 6452 does not define the word "acknowledged." Nor does any other provision of the Probate Code. At the outset, however, we may logically infer that the word refers to conduct other than that described in subdivision (b) of section 6452, i.e., contributing to the child's support or care; otherwise, subdivision (a) of the statute would be surplusage and unnecessary.

Although no statutory definition appears, the common meaning of "acknowledge" is "to admit to be true or as stated; confess." (Webster's New World Dict. (2d ed.1982) p. 12; see Webster's 3d New Internat. Dict. (1981) p. 17 ["to show by word or act that one has knowledge of and agrees to (a fact or truth) ... [or] concede to be real or true ... [or] admit"].) Were we to ascribe this common meaning to the statutory language, there could be no doubt that section 6452's acknowledgement requirement is met here. As the stipulated record reflects, Griswold's natural mother initiated a bastardy proceeding in the Ohio juvenile court in 1941 in which she alleged that Draves was the child's father. Draves appeared in that proceeding and publicly "confessed" that the allegation was true. There is no evidence indicating that Draves did not confess knowingly and voluntarily, or that he later denied paternity or knowledge of Griswold to those who were aware of the circumstances.[3] Although the record establishes that Draves did not speak of Griswold to Margaret and Daniel, there is no evidence suggesting he sought to actively conceal the facts from them or anyone else. Under the plain terms of section 6452, the only sustainable conclusion on this record is that Draves acknowledged Griswold.

Although the facts here do not appear to raise any ambiguity or uncertainty as to the statute's application, we shall, in an abundance of caution, [9][12]test our conclusion against the general purpose and legislative history of the statute. (See *Day v. City of Fontana*, *supra*, 25 Cal.4th at p. 274, 105 Cal.Rptr.2d 457, 19 P.3d 1196; *Powers v. City of Richmond* (1995) 10 Cal.4th 85, 93, 40 Cal.Rptr.2d 839, 893 P.2d 1160.)

The legislative bill proposing enactment of former section 6408.5 of the Probate Code (Stats.1983, ch. 842, § 55, p. 3084; Stats.1984, ch. 892, § 42, p. 3001), the first modern statutory forerunner to section 6452, was introduced to effectuate the Tentative Recommendation Relating to Wills and Intestate Succession of the California Law Revision Commission (the Commission). (See 17 Cal. Law Revision Com. Rep. (1984) p. 867, referring to 16 Cal. Law Revision Com. Rep. (1982) p. 2301.) According to the Commission, which had been solicited by the Legislature to study and recommend changes to the then existing Probate Code, the proposed comprehensive legislative package to govern wills, intestate succession, and related matters would "provide rules that are more likely to carry out the intent of the testator or, if a person dies without a will, the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.) The Commission also advised that the purpose of the legislation was to "make probate more efficient and expeditious." (*Ibid.*) From all that

3. Huron County court documents indicate that at least two people other than Morris, one of whom appears to have been a relative of Draves, had knowledge of the bastardy proceeding.

appears, the Legislature shared the Commission's views in enacting the legislative bill of which former section 6408.5 was a part. (See 17 Cal. Law Revision Com. Rep., *supra*, at p. 867.)

[4] Typically, disputes regarding parental acknowledgement of a child born out of wedlock involve factual assertions that are made by persons who are likely to have direct financial interests in the child's estate and that relate to events occurring long before the child's death. Questions of credibility must be resolved without the child in court to corroborate or rebut the claims of those purporting to have witnessed the parent's statements or conduct concerning the child. Recognition that an in-court admission of the parent and child relationship constitutes powerful evidence of an acknowledgement under section 6452 would tend to reduce litigation over such matters and thereby effectuate the legislative objective to "make probate more efficient and expeditious." (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319.)

Additionally, construing the acknowledgement requirement to be met in circumstances such as these is neither illogical nor absurd with respect to the intent of an intestate decedent. Put another way, where a parent willingly acknowledged paternity in an action initiated to establish the parent-child relationship and thereafter was never heard to deny such relationship (§ 6452, subd. (a)), and where that parent paid all court-ordered support for that child for 18 years (*id.*, subd. (b)), it cannot be said that the participation [913] of that parent or his relative in the estate of the deceased child is either (1) so illogical that it cannot represent the intent that one without a will is most likely to have had (16 Cal. Law Revision Com. Rep., *supra*, at p. 2319) or (2) "so absurd as to make it manifest that it could not have been intended" by the Legislature (*Estate of De Cigaran* (1907) 150 Cal. 682, 688, 89 P. 833 [construing Civ.Code, former § 1388 as entitling the illegitimate half sister of an illegitimate decedent to inherit her entire intestate separate property to the exclusion of the decedent's surviving husband]).

There is a dearth of case law pertaining to section 6452 or its predecessor statutes, but what little there is supports the foregoing construction. Notably, *Lozano v. Scalier* (1996) 51 Cal.App.4th 843, 59 Cal. Rptr.2d 346 (*Lozano*), the only prior decision directly addressing section 6452's acknowledgement requirement, declined to read the statute as necessitating more than what its plain terms call for.

In *Lozano*, the issue was whether the trial court erred in allowing the plaintiff, who was the natural father of a 10–month–old child, to pursue a wrongful death action arising out of the child's accidental death. The wrongful death statute provided that where the decedent left no spouse or child, such an action may be brought by the persons "who would be entitled to the property of the decedent by intestate succession." (Code Civ. Proc., § 377.60, subd. (a).) Because the child had been born out of wedlock, the plaintiff had no right to succeed to the estate unless he had both "acknowledged the child" and "contributed to the support or the care of the child" as required by section 6452. *Lozano* upheld the trial court's finding of acknowledgement in light of evidence in the record that the plaintiff had signed as "Father" on a medical form five months before the child's birth and had repeatedly told family members and others that he was the child's father. (*Lozano, supra*, 51 Cal.App.4th at pp. 845, 848, 59 Cal.Rptr.2d 346.)

Significantly, *Lozano* rejected arguments that an acknowledgement under Probate Code section 6452 must be (1) a witnessed writing and (2) made after the child was born so that the child is identi-

fied. In doing so, *Lozano* initially noted there were no such requirements on the face of the statute. (*Lozano, supra,* 51 Cal.App.4th at p. 848, 59 Cal.Rptr.2d 346.) *Lozano* next looked to the history of the statute and made two observations in declining to read such terms into the statutory language. First, even though the Legislature had previously required a witnessed writing in cases where an illegitimate child sought to inherit from the father's estate, it repealed such requirement in 1975 in an apparent effort to ease the evidentiary proof of the parent-child relationship. (*Ibid.*) Second, other statutes that required a parent-child relationship expressly contained more formal acknowledgement requirements for the assertion of certain other rights or privileges. (See *id.* at p. 849, 59 Cal.Rptr.2d 346, citing Code Civ. Proc., § 376, subd. (c), Health & Safety Code, § 102750, & Fam. Code, § 7574.) Had the Legislature wanted to impose more stringent requirements for an acknowledgement under section 6452, *Lozano* reasoned, it certainly had precedent for doing so. (*Lozano, supra,* 51 Cal.App.4th at p. 849, 59 Cal.Rptr.2d 346.)

Apart from Probate Code section 6452, the Legislature had previously imposed an acknowledgement requirement in the context of a statute providing that a father could legitimate a child born out of wedlock for all purposes "by publicly acknowledging it as his own." (See Civ.Code, former § 230.)[4] Since that statute dealt with an analogous subject and employed a substantially similar phrase, we address the case law construing that legislation below.

In *Blythe v. Ayres* (1892) 96 Cal. 532, 31 P. 915, decided over a century ago, this court determined that the word "acknowledge," as it appeared in former section 230 of the Civil Code, had no technical meaning. (*Blythe v. Ayres, supra,* 96 Cal. at p. 577, 31 P. 915.) We therefore employed the word's common meaning, which was "'to own or admit the knowledge of.'" (*Ibid.* [relying upon Webster's definition]; see also *Estate of Gird* (1910) 157 Cal. 534, 542, 108 P. 499.) Not only did that definition endure in case law addressing legitimation (*Estate of Wilson* (1958) 164 Cal. App.2d 385, 388–389, 330 P.2d 452; see *Estate of Gird, supra,* 157 Cal. at pp. 542–543, 108 P. 499), but, as discussed, the word retains virtually the same meaning in general usage today—"to admit to be true or as stated; confess." (Webster's New World Dict., *supra,* at p. 12; see Webster's 3d New Internat. Dict., *supra,* at p. 17.)

Notably, the decisions construing former section 230 of the Civil Code indicate that its public acknowledgement requirement would have been met where a father made a single confession in court to the paternity of a child.

In *Estate of McNamara* (1919) 181 Cal. 82, 183 P. 552, for example, we were emphatic in recognizing that a single unequivocal act could satisfy the acknowledgement requirement for purposes of statutory legitimation. Although the record in that case

4. Former section 230 of the Civil Code provided: "The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this Chapter do not apply to such an adoption." (Enacted 1 Cal. Civ.Code (1872) § 230, p. 68, repealed by Stats.1975, ch. 1244, § 8, p. 3196.)

In 1975, the Legislature enacted California's Uniform Parentage Act, which abolished the concept of legitimacy and replaced it with the concept of parentage. (See *Adoption of Kelsey S.* (1992) 1 Cal.4th 816, 828–829, 4 Cal.Rptr.2d 615, 823 P.2d 1216.)

had contained additional evidence of the father's acknowledgement, we focused our attention on his [916] one act of signing the birth certificate and proclaimed: "A more public acknowledgement than the act of [the decedent] in signing the child's birth certificate describing himself as the father, it would be difficult to imagine." (*Id.* at pp. 97–98, 183 P. 552.)

Similarly, in *Estate of Gird, supra*, 157 Cal. 534, 108 P. 499, we indicated in dictum that "a public avowal, made in the courts" would constitute a public acknowledgement under former section 230 of the Civil Code. (*Estate of Gird, supra*, 157 Cal. at pp. 542–543, 108 P. 499.)

Finally, in *Wong v. Young* (1947) 80 Cal.App.2d 391, 181 P.2d 741, a man's admission of paternity in a verified pleading, made in an action seeking to have the man declared the father of the child and for child support, was found to have satisfied the public acknowledgement requirement of the legitimation statute. (*Id.* at pp. 393–394, 181 P.2d 741.) Such admission was also deemed to constitute an acknowledgement under former Probate Code section 255, which had allowed illegitimate children to inherit from their fathers under an acknowledgement requirement that was even more stringent than that contained in Probate Code section 6452.[5] (*Wong v. Young, supra*, 80 Cal.App.2d at p. 394, 181 P.2d 741; see also *Estate of De Laveaga* (1904) 142 Cal. 158, 168, 75 P. 790 [indicating in dictum that, under a predecessor to Probate Code section 255, father sufficiently acknowledged an illegitimate child in a single witnessed writing declaring the child as his son].) Ultimately, however, legitimation of the child under former section 230 of the Civil Code was not found because two other of the statute's express requirements, i.e., receipt of the child into the father's family and the father's otherwise treating the child as his legitimate child (see *ante*, fn. 4), had not been established. (*Wong v. Young, supra*, 80 Cal. App.2d at p. 394, 181 P.2d 741.)

[5] Although the foregoing authorities did not involve section 6452, their views on parental acknowledgement of out-of-wedlock children were part of the legal landscape when the first modern statutory forerunner to that provision was enacted in 1985. (See former § 6408.5, added by Stats.1983, ch. 842, § 55, p. 3084, and amended by Stats.1984, ch. 892, § 42, p. 3001.) Where, as here, legislation has been judicially construed and a subsequent statute on the same or an analogous subject uses identical or substantially similar language, we may presume that the Legislature intended the [916] same construction, unless a contrary intent clearly appears. (*In re Jerry R.* (1994) 29 Cal.App.4th 1432, 1437, 35 Cal.Rptr.2d 155; see also *People v. Masbruch* (1996) 13 Cal.4th 1001, 1007, 55 Cal.Rptr.2d 760, 920 P.2d 705; *Belridge Farms v. Agricultural Labor Relations Bd.* (1978) 21 Cal.3d 551, 557, 147 Cal. Rptr. 165, 580 P.2d 665.) Since no evidence of a contrary intent clearly appears, we may reasonably infer that the types of acknowledgement formerly deemed sufficient for the legitimation statute (and former section 255, as well) suffice for purposes of intestate succession under section 6452.[6]

5. Section 255 of the former Probate Code provided in pertinent part: " 'Every illegitimate child, whether born or conceived but unborn, in the event of his subsequent birth, is an heir of his mother, and also of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father, and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock. . . .' " (*Estate of Ginochio* (1974) 43 Cal.App.3d 412, 416, 117 Cal.Rptr. 565, italics omitted.)

Doner–Griswold disputes whether the acknowledgement required by Probate Code section 6452 may be met by a father's single act of acknowledging a child in court. In her view, the requirement contemplates a situation where the father establishes an ongoing parental relationship with the child or otherwise acknowledges the child's existence to his subsequent wife and children. To support this contention, she relies on three other authorities addressing acknowledgement under former section 230 of the Civil Code: *Blythe v. Ayres, supra*, 96 Cal. 532, 31 P. 915, *Estate of Wilson, supra*, 164 Cal. App.2d 385, 330 P.2d 452, and *Estate of Maxey* (1967) 257 Cal.App.2d 391, 64 Cal. Rptr. 837.

In *Blythe v. Ayres, supra*, 96 Cal. 532, 31 P. 915, the father never saw his illegitimate child because she resided in another country with her mother. Nevertheless, he "was garrulous upon the subject" of his paternity and "it was his common topic of conversation." (*Id.* at p. 577, 31 P. 915.) Not only did the father declare the child to be his child, "to all persons, upon all occasions," but at his request the child was named and baptized with his surname. (*Ibid.*) Based on the foregoing, this court remarked that "it could almost be held that he shouted it from the house-tops." (*Ibid.*) Accordingly, we concluded that the father's public acknowledgement under former section 230 of the Civil Code could "hardly be considered debatable." (*Blythe v. Ayres, supra*, 96 Cal. at p. 577, 31 P. 915.)

In *Estate of Wilson, supra*, 164 Cal. App.2d 385, 330 P.2d 452, the evidence showed that the father had acknowledged to his wife that he was the father of a child born to another woman. (*Id.* at p. 389, 330 P.2d 452.) Moreover, he had introduced the child as his own on many occasions, including at the funeral of his mother. (*Ibid.*) In light of such evidence, the Court of Appeal upheld the trial court's finding that the father had publicly acknowledged the child within the contemplation of the legitimation statute.

[8a] In *Estate of Maxey, supra*, 257 Cal. App.2d 391, 64 Cal.Rptr. 837, the Court of Appeal found ample evidence supporting the trial court's determination that the father publicly acknowledged his illegitimate son for purposes of legitimation. The father had, on several occasions, visited the house where the child lived with his mother and asked about the child's school attendance and general welfare. (*Id.* at p. 397, 64 Cal.Rptr. 837.) The father also, in the presence of others, had asked for permission to take the child to his own home for the summer, and, when that request was refused, said that the child was his son and that he should have the child part of the time. (*Ibid.*) In addition, the father had addressed the child as his son in the presence of other persons. (*Ibid.*)

Doner–Griswold correctly points out that the foregoing decisions illustrate the principle that the existence of acknowledgement must be decided on the circumstances of each case. (*Estate of Baird* (1924) 193 Cal. 225, 277, 223 P. 974.) In those decisions, however, the respective fathers had not confessed to paternity in a legal action. Consequently, the courts

6. Probate Code section 6452's acknowledgement requirement differs from that found in former section 230 of the Civil Code, in that section 6452 does not require a parent to "publicly" acknowledge a child born out of wedlock. That difference, however, fails to accrue to Doner–Griswold's benefit. If anything, it suggests that the acknowledgement contemplated in section 6452 encompasses a broader spectrum of conduct than that associated with the legitimation statute.

looked to what other forms of public acknowledgement had been demonstrated by fathers. (See also *Lozano, supra*, 51 Cal. App.4th 843, 59 Cal.Rptr.2d 346 [examining father's acts both before and after child's birth in ascertaining acknowledgement under § 6452].)

That those decisions recognized the validity of different forms of acknowledgement should not detract from the weightiness of a father's in-court acknowledgement of a child in an action seeking to establish the existence of a parent and child relationship. (See *Estate of Gird, supra*, 157 Cal. at pp. 542–543, 108 P. 499; *Wong v. Young, supra*, 80 Cal.App.2d at pp. 393–394, 181 P.2d 741.) As aptly noted by the Court of Appeal below, such an acknowledgement is a critical one that typically leads to a paternity judgment and a legally enforceable obligation of support. Accordingly, such acknowledgements carry as much, if not greater, significance than those made to certain select persons (*Estate of Maxey, supra*, 257 Cal.App.2d at p. 397, 64 Cal.Rptr. 837) or "shouted . . . from the house-tops" (*Blythe v. Ayres, supra*, 96 Cal. at p. 577, 31 P. 915).

[6] Doner–Griswold's authorities do not persuade us that section 6452 should be read to require that a father have personal contact with his out-of-wedlock child, that he make purchases for the child, that he receive the child into his home and other family, or that he treat the child as he does his other children. First and foremost, the language of section 6452 does not support such requirements. (See *Lozano, supra*, 51 Cal.App.4th at p. 848, 59 Cal.Rptr.2d 346.) We may not, under the guise of interpretation, insert qualifying provisions not included in the statute. (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349, 45 Cal.Rptr.2d 279, 902 P.2d 297.)

Second, even though *Blythe v. Ayres, supra*, 96 Cal. 532, 31 P. 915, *Estate of Wilson, supra*, 164 Cal.App.2d 385, 330 P.2d 452, and *Estate of Maxey, supra*, 257 [918]Cal.App.2d 391, 64 Cal.Rptr. 837, variously found such factors significant for purposes of legitimation, their reasoning appeared to flow directly from the express terms of the controlling statute. In contrast to Probate Code section 6452, former section 230 of the Civil Code provided that the legitimation of a child born out of wedlock was dependent upon three distinct conditions: (1) that the father of the child "publicly acknowledg[e] it as his own"; (2) that he "receiv[e] it as such, with the consent of his wife, if he is married, into his family"; and (3) that he "otherwise treat[ ] it as if it were a legitimate child." (*Ante*, fn. 4; see *Estate of De Laveaga, supra*, 142 Cal. at pp. 168–169, 75 P. 790 [indicating that although father acknowledged his illegitimate son in a single witnessed writing, legitimation statute was not satisfied because the father never received the child into his family and did not treat the child as if he were legitimate].) That the legitimation statute contained such explicit requirements, while section 6452 requires only a natural parent's acknowledgement of the child and contribution toward the child's support or care, strongly suggests that the Legislature did not intend for the latter provision to mirror the former in all the particulars identified by Doner–Griswold. (See *Lozano, supra*, 51 Cal.App.4th at pp. 848–849, 59 Cal.Rptr.2d 346; compare with Fam.Code, § 7611, subd. (d) [a man is "presumed" to be the natural father of a child if "[h]e receives the child into his home and openly holds out the child as his natural child"].)

In an attempt to negate the significance of Draves's in-court confession of paternity, Doner–Griswold emphasizes the circumstance that Draves did not tell his two

other children of Griswold's existence. The record here, however, stands in sharp contrast to the primary authority she offers on this point. *Estate of Baird, supra,* 193 Cal. 225, 223 P. 974, held there was no public acknowledgement under former section 230 of the Civil Code where the decedent admitted paternity of a child to the child's mother and their mutual acquaintances but actively concealed the child's existence and his relationship to the child's mother from his own mother and sister, with whom he had intimate and affectionate relations. In that case, the decedent not only failed to tell his relatives, family friends, and business associates of the child (193 Cal. at p. 252, 223 P. 974), but he affirmatively denied paternity to a half brother and to the family coachman (*id.* at p. 277, 223 P. 974). In addition, the decedent and the child's mother masqueraded under a fictitious name they assumed and gave to the child in order to keep the decedent's mother and siblings in ignorance of the relationship. (*Id.* at pp. 260–261, 223 P. 974.) In finding that a public acknowledgement had not been established on such facts, *Estate of Baird* stated: "A distinction will be recognized between a mere failure to disclose or publicly acknowledge paternity and a willful misrepresentation in regard to it; in such circumstances there must be no purposeful concealment of the fact of paternity." (*Id.* at p. 276, 223 P. 974.)

[9]Unlike the situation in *Estate of Baird,* Draves confessed to paternity in a formal legal proceeding. There is no evidence that Draves thereafter disclaimed his relationship to Griswold to people aware of the circumstances (see *ante,* fn. 3), or that he affirmatively denied he was Griswold's father despite his confession of paternity in the Ohio court proceeding. Nor is there any suggestion that Draves engaged in contrivances to prevent the discovery of Griswold's existence. In light of the obvious dissimilarities, Doner–Griswold's reliance on *Estate of Baird* is misplaced.

Estate of Ginochio, supra, 43 Cal.App.3d 412, 117 Cal.Rptr. 565, likewise, is inapposite. That case held that a judicial determination of paternity following a vigorously contested hearing did not establish an acknowledgement sufficient to allow an illegitimate child to inherit under section 255 of the former Probate Code. (See *ante,* fn. 5.) Although the court noted that the decedent ultimately paid the child support ordered by the court, it emphasized the circumstance that the decedent was declared the child's father *against his will* and at no time did he admit he was the father, or sign any writing acknowledging publicly or privately such fact, or otherwise have contact with the child. (*Estate of Ginochio, supra,* 43 Cal.App.3d at pp. 416–417, 117 Cal.Rptr. 565.) Here, by contrast, Draves did not contest paternity, vigorously or otherwise. Instead, Draves stood before the court and openly admitted the parent and child relationship, and the record discloses no evidence that he subsequently disavowed such admission to anyone with knowledge of the circumstances. On this record, section 6452's acknowledgement requirement has been satisfied by a showing of what Draves did and did not do, not by the mere fact that paternity had been judicially declared.

Finally, Doner–Griswold contends that a 1996 amendment of section 6452 evinces the Legislature's unmistakable intent that a decedent's estate may not pass to siblings who had no contact with, or were totally unknown to, the decedent. As we shall explain, that contention proves too much.

Prior to 1996, section 6452 and a predecessor statute, former section 6408, expressly provided that their terms did not apply to "a natural brother or a sister of

the child" born out of wedlock.[7] In construing former section 6408, *Estate of Corcoran* (1992) 7 Cal.App.4th 1099, 9 Cal. Rptr.2d 475 held that a half sibling was a "natural brother or sister" within the meaning of such exception. That holding effectively allowed a half sibling and the issue of another half sibling to inherit from a decedent's estate where there had been no parental acknowledgement or support of the decedent as ordinarily required. In direct response to *Estate of Corcoran*, the Legislature amended section 6452 by eliminating the exception for natural siblings and their issue. (Stats.1996, ch. 862, § 15; see Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995–1996 Reg. Sess.) as amended June 3, 1996, pp. 17–18 (Assembly Bill No. 2751).) According to legislative documents, the Commission had recommended deletion of the statutory exception because it "creates an undesirable risk that the estate of the deceased out-of-wedlock child will be claimed by siblings with whom the decedent had no contact during lifetime, and of whose existence the decedent was unaware." (Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751 (1995–1996 Reg. Sess.) as introduced Feb. 22, 1996, p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17–18.)

This legislative history does not compel Doner–Griswold's construction of section 6452. Reasonably read, the comments of the Commission merely indicate its concern over the "undesirable risk" that unknown siblings could rely on the statutory exception to make claims against estates. Neither the language nor the history of the statute, however, evinces a clear intent to make inheritance contingent upon the decedent's awareness of or contact with such relatives. (See Assem. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at p. 6; see also Sen. Com. on Judiciary, Analysis of Assem. Bill No. 2751, *supra*, at pp. 17–18.) Indeed, had the Legislature intended to categorically preclude intestate succession by a natural parent or a relative of that parent who had no contact with or was unknown to the deceased child, it could easily have so stated. Instead, by deleting the statutory exception for natural siblings, thereby subjecting siblings to section 6452's dual requirements of acknowledgement and support, the Legislature acted to prevent sibling inheritance under the type of circumstances presented in *Estate of Corcoran*, *supra*, 7 Cal.App.4th 1099, 9 Cal. Rptr.2d 475, and to substantially reduce the risk noted by the Commission.[8]

7. Former section 6408, subdivision (d) provided: "If a child is born out of wedlock, neither a parent nor a relative of a parent (except for the issue of the child *or a natural brother or sister of the child or the issue of that brother or sister*) inherits from or through the child on the basis of the relationship of parent and child between that parent and child unless both of the following requirements are satisfied: [¶] (1) The parent or a relative of the parent acknowledged the child. [¶] (2) The parent or a relative of the parent contributed to the support or the care of the child." (Stats.1990, ch. 79, § 14, p. 722, italics added.)

8. We observe that, under certain former versions of Ohio law, a father's confession of paternity in an Ohio juvenile court proceeding was not the equivalent of a formal probate court "acknowledgement" that would have allowed an illegitimate child to inherit from the father in that state. (See *Estate of Vaughan* (2001) 90 Ohio St.3d 544, 740 N.E.2d 259, 262–263.) Here, however, Doner–Griswold does not dispute that the right of the succession claimants to succeed to Griswold's property is governed by the law of Griswold's domicile, i.e., California law, not the law of the claimants' domicile or the law of the place where Draves's acknowledgement occurred. (Civ.Code, §§ 755, 946; see *Estate of Lund* (1945) 26 Cal.2d 472, 493–496, 159 P.2d 643 [where father died domiciled in California, his out-of-wedlock son could inherit

[922] B. Requirement of a Natural Parent and Child Relationship

Section 6452 limits the ability of a "natural parent" or "a relative of that parent" to inherit from or through the child "on the basis of the parent and child relationship between that parent and the child."

Probate Code section 6453 restricts the means by which a relationship of a natural parent to a child may be established for purposes of intestate succession.[9] (See *Estate of Sanders* (1992) 2 Cal.App.4th 462, 474–475, 3 Cal.Rptr.2d 536.) Under section 6453, subdivision (a), a natural parent and child relationship is established where the relationship is presumed under the Uniform Parentage Act and not rebutted. (Fam.Code, § 7600 et seq.) It is undisputed, however, that none of those presumptions applies in this case.

Alternatively, and as relevant here, under Probate Code section 6453, subdivision (b), a natural parent and child relationship may be established pursuant to section 7630, subdivision (c) of the Family Code,[10] if a court order was entered during the father's lifetime declaring paternity.[11] (§ 6453, subd. (b)(1).)

[7] See contends the question of Draves's paternity was fully and finally adjudicated in the 1941 bastardy proceeding in Ohio. That proceeding, he [922] argues, satisfies both the Uniform Parentage Act and the Probate Code, and should be binding on the parties here.

[8] If a valid judgment of paternity is rendered in Ohio, it generally is binding on California courts if Ohio had jurisdiction over the parties and the subject matter, and the parties were given reasonable notice and an opportunity to be heard. (*Ruddock v. Ohls* (1979) 91 Cal.App.3d 271, 276, 154 Cal.Rptr. 87.) California courts generally recognize the importance of a final determination of paternity. (E.g.,

where all the legitimation requirements of former § 230 of the Civ. Code were met, even though the acts of legitimation occurred while the father and son were domiciled in two other states wherein such acts were not legally sufficient].)

9. Section 6453 provides in full: "For the purpose of determining whether a person is a 'natural parent' as that term is used is this chapter: [¶] (a) A natural parent and child relationship is established where that relationship is presumed and not rebutted pursuant to the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code. [¶] (b) A natural parent and child relationship may be established pursuant to any other provisions of the Uniform Parentage Act, except that the relationship may not be established by an action under subdivision (c) of Section 7630 of the Family Code unless any of the following conditions exist: [¶] (1) A court order was entered during the father's lifetime declaring paternity. [¶] (2) Paternity is established by clear and convincing evidence that the father has openly held out the child as his own. [¶] (3) It was impossible for the father to hold out the child as his own and paternity is established by clear and convincing evidence."

10. Family Code section 7630, subdivision (c) provides in pertinent part: "An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 ... may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor. An action under this subdivision shall be consolidated with a proceeding pursuant to Section 7662 if a proceeding has been filed under Chapter 5 (commencing with Section 7660). The parental rights of the alleged natural father shall be determined as set forth in Section 7664."

11. See makes no attempt to establish Draves's natural parent status under other provisions of section 6453, subdivision (b).

Weir v. Ferreira (1997) 59 Cal.App.4th 1509, 1520, 70 Cal.Rptr.2d 33 (*Weir*); *Guardianship of Claralyn S.* (1983) 148 Cal.App.3d 81, 85, 195 Cal.Rptr. 646; cf. *Estate of Camp* (1901) 131 Cal. 469, 471, 63 P. 736 [same for adoption determinations].)

Doner–Griswold does not dispute that the parties here are in privity with, or claim inheritance through, those who are bound by the bastardy judgment or are estopped from attacking it. (See *Weir, supra*, 59 Cal.App.4th at pp. 1516–1517, 1521, 70 Cal.Rptr.2d 33.) Instead, she contends See has not shown that the issue adjudicated in the Ohio bastardy proceeding is identical to the issue presented here, that is, whether Draves was the natural parent of Griswold.

Although we have found no California case directly on point, one Ohio decision has recognized that a bastardy judgment rendered in Ohio in 1950 was res judicata of any proceeding that might have been brought under the Uniform Parentage Act. (*Birman v. Sproat* (1988) 47 Ohio App.3d 65, 546 N.E.2d 1354, 1357 [child born out of wedlock had standing to bring will contest based upon a paternity determination in a bastardy proceeding brought during testator's life]; see also Black's Law Dict., *supra*, at pp. 146, 1148 [equating a bastardy proceeding with a paternity suit].) Yet another Ohio decision found that parentage proceedings, which had found a decedent to be the "reputed father" of a child,[12] satisfied an Ohio legitimation statute and conferred standing upon the illegitimate child to contest the decedent's will where the father-child relationship was established prior to the decedent's death. (*Beck v. Jolliff* (1984) 22 Ohio App.3d 84, 489 N.E.2d 825, 829; see also *Estate of Hicks* (1993) 90 Ohio App.3d 483, 629 N.E.2d 1086, 1088–1089 [parentage issue must be determined prior to the father's death to the extent the parent-child relationship is being established under the chapter governing descent and distribution].) While we are not bound to follow these Ohio authorities, they persuade us that the 1941 bastardy proceeding decided the identical issue presented here.

Next, Doner–Griswold argues the Ohio judgment should not be given res judicata effect because the bastardy proceeding was quasi-criminal in nature. [1a2a]It is her position that Draves's confession may have reflected only a decision to avoid a jury trial instead of an adjudication of the paternity issue on the merits.

To support this argument, Doner–Griswold relies upon *Pease v. Pease* (1988) 201 Cal.App.3d 29, 246 Cal.Rptr. 762 (*Pease*). In that case, a grandfather was sued by his grandchildren and others in a civil action alleging the grandfather's molestation of the grandchildren. When the grandfather cross-complained against his former wife for apportionment of fault, she filed a demurrer contending that the grandfather was collaterally estopped from asserting the negligent character of his acts by virtue of his guilty plea in a criminal proceeding involving the same issues. On appeal, the judgment dismissing the cross-complaint was reversed. The appellate court reasoned that a trial court in a civil proceeding may not give collateral estoppel effect to a criminal conviction involving the same issues if the conviction resulted from a guilty plea. "The issue of appellant's guilt was not fully litigated in the prior criminal proceeding; rather, appellant's plea bargain may reflect nothing more than a compromise instead of an ultimate determination of his guilt. Appel-

12. The term "reputed father" appears to have reflected the language of the relevant Ohio statute at or about the time of the 1941 bastardy proceeding. (See *State ex rel. Discus v. Van Dorn* (1937) 56 Ohio App. 82, 10 N.E.2d 14, 16.)

lant's due process right to a hearing thus outweighs any countervailing need to limit litigation or conserve judicial resources." (*Id.* at p. 34, 246 Cal.Rptr. 762, fn. omitted.)

Even assuming, for purposes of argument only, that *Pease*'s reasoning may properly be invoked where the father's admission of paternity occurred in a bastardy proceeding (see *Reams v. State ex rel. Favors* (1936) 53 Ohio App. 19, 4 N.E.2d 151, 152 [indicating that a bastardy proceeding is more civil than criminal in character]), the circumstances here do not call for its application. Unlike the situation in *Pease*, neither the in-court admission nor the resulting paternity judgment at issue is being challenged by the father (Draves). Moreover, neither the father, nor those claiming a right to inherit through him, seek to litigate the paternity issue. Accordingly, the father's due process rights are not at issue and there is no need to determine whether such rights might outweigh any countervailing need to limit litigation or conserve judicial resources. (See *Pease*, *supra*, 201 Cal.App.3d at p. 34, 246 Cal.Rptr. 762.)

Additionally, the record fails to support any claim that Draves's confession merely reflected a compromise. Draves, of course, is no longer living and can offer no explanation as to why he admitted paternity in the bastardy proceeding. Although Doner–Griswold suggests that Draves confessed to avoid the publicity of a jury trial, and not because the paternity charge had merit, that suggestion is purely speculative and finds no evidentiary support in the record.

[8] Finally, Doner–Griswold argues that See and Griswold's half siblings do not have standing to seek the requisite paternity determination pursuant to the Uniform Parentage Act under section 7630, subdivision (c) of the Family Code. The question here, however, is whether the judgment in the bastardy proceeding initiated by Griswold's mother forecloses Doner–Griswold's relitigation of the parentage issue.

[9] Although Griswold's mother was not acting pursuant to the Uniform Parentage Act when she filed the bastardy complaint in 1941, neither that legislation nor the Probate Code provision should be construed to ignore the force and effect of the judgment she obtained. That Griswold's mother brought her action to determine paternity long before the adoption of the Uniform Parentage Act, and that all procedural requirements of an action under Family Code section 7630 may not have been followed, should not detract from its binding effect in this probate proceeding where the issue adjudicated was identical with the issue that would have been presented in a Uniform Parentage Act action. (See *Weir*, *supra*, 59 Cal.App.4th at p. 1521, 70 Cal.Rptr.2d 33.) Moreover, a prior adjudication of paternity does not compromise a state's interests in the accurate and efficient disposition of property at death. (See *Trimble v. Gordon* (1977) 430 U.S. 762, 772 & fn. 14, 97 S.Ct. 1459, 52 L.Ed.2d 31 [striking down a provision of a state probate act that precluded a category of illegitimate children from participating in their intestate fathers' estates where the parent-child relationship had been established in state court paternity actions prior to the fathers' deaths].)

In sum, we find that the 1941 Ohio judgment was a court order "entered during the father's lifetime declaring paternity" (§ 6453, subd. (b)(1)), and that it establishes Draves as the natural parent of Griswold for purposes of intestate succession under section 6452.

Disposition

[10] " 'Succession to estates is purely a matter of statutory regulation, which can-

not be changed by the courts.' " (*Estate of De Cigaran, supra*, 150 Cal. at p. 688, 89 P. 833.) We do not disagree that a natural parent who does no more than openly acknowledge a child in court and pay court-ordered child support may not reflect a particularly worthy predicate for inheritance by that parent's issue, but section 6452 provides in unmistakable language that it shall be so. While the Legislature remains free to reconsider the matter and may choose to change the rules of succession at any time, this court will not do so under the pretense of interpretation.

The judgment of the Court of Appeal is affirmed.

GEORGE, C.J., KENNARD, J., WERDEGAR, J., CHIN, J., concur.

Concurring Opinion by BROWN, J.

I reluctantly concur. The relevant case law strongly suggests that a father who admits paternity in court with no subsequent disclaimers "acknowledge[s] the child" within the meaning of subdivision (a) of Probate Code section 6452. Moreover, neither the statutory language nor the legislative history supports an alternative interpretation. Accordingly, we must affirm the judgment of the Court of Appeal.

Nonetheless, I believe our holding today contravenes the overarching purpose behind our laws of intestate succession—to carry out "the intent a decedent without a will is most likely to have had." (16 Cal. Law Revision Com. Rep. (1982) p. 2319.) I doubt most children born out of wedlock would have wanted to bequeath a share of their estate to a "father" who never contacted them, never mentioned their existence to his family and friends, and only paid court-ordered child support. I doubt even more that these children would have wanted to bequeath a share of their estate to that father's other offspring. Finally, I have *no* doubt that most, if not all, children born out of wedlock would have balked at bequeathing a share of their estate to a "forensic genealogist."

To avoid such a dubious outcome in the future, I believe our laws of intestate succession should allow a parent to inherit from a child born out of wedlock only if the parent has some sort of parental connection to that child. For example, requiring a parent to treat a child born out of wedlock as the parent's own before the parent may inherit from that child would prevent today's outcome. (See, e.g., *Bullock v. Thomas* (Miss.1995) 659 So.2d 574, 577 [a father must "openly treat" a child born out of wedlock "as his own" in order to inherit from that child].) More importantly, such a requirement would comport with the stated purpose behind our laws of succession because that child likely would have wanted to give a share of his estate to a parent that treated him as the parent's own.

Of course, this court may not remedy this apparent defect in our intestate succession statutes. Only the Legislature may make the appropriate revisions. I urge it to do so here.