

Estates & Trusts: Pretermitted Heirs

An Overview for Oklahoma Lawyers

Agenda

- Introduction to Pretermitted Heirs
- Statutes
- Establishing Heirship
- Pretermitted or Intentionally Omitted?
- Satisfying the Share of the Pretermitted Heir
- Asserting a Pretermitted Heir Claim
- Choice of Law
- Non-Probate Assets
- Estate Planning Best Practices

Introduction

- Disposing of property is an inalienable natural right throughout a person's lifetime; however, the right to control disposition of property after death and the right of inheritance are statutory. *In Re Estate of Jackson*, 2008 OK 83.

The Statutes

- With respect to the rights of a child to inherit from the testator parent, the controlling statutes are 84 O.S. §§ 131-134.
- These statutes remain unchanged since their codification in 1910.

The Statutes

- These statutes apply to the lineal descendants of a child that predeceases the testator.
- These statutes apply to all wills, including holographic wills.

The Statutes

Section 131 - Determining Share for Afterborn Child Unprovided for in Will

Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate.

The Statutes

Section 132 - Determining Share for Child Unintentionally Omitted from Will

When any testator omits to provide in his will for any of his children, or for the issue of any deceased child unless it appears that such omission was intentional, such child, or the issue of such child, must have the same share in the estate of the testator, as if he had died intestate, and succeeds thereto as provided in the preceding section.

The Statutes

Section 133 - Determination of Share Assigned to Afterborn or Omitted Child

When any share of the estate of a testator is assigned to a child...omitted in a will..., the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees, or legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator...would thereby be defeated; in such case such specific devise, legacy or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

The Statutes

Section 134 - Determination of Share Assigned to Afterborn or Omitted Child

If such children, or their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of the three preceding sections.

Establishing Heirship

- With respect to children born out of wedlock, 84 O.S. § 215 has been held to apply to both intestate and testate proceedings.
- Uniform Parentage Act, 10 O.S. §§ 7700-101 et seq., which became effective in Oklahoma in 2006, also applies to determine parentage in both intestate and testate proceedings.

Establishing Heirship

- Adopted children of the testator are included in the protections for pretermitted heirs.
- Child adopted by another also stand to inherit from their birth parent, regardless of the termination of the birth parent's parental rights.

Pretermitted or Intentionally Omitted?

There are many ways a person can express the intention to omit to provide for his or her children, including:

- expressly state that the named child is to receive nothing;
- provide only a nominal amount for the child who claims to be pretermitted;
- name a child, but then leave them nothing;

Pretermitted or Intentionally Omitted?

There are many ways a person can express the intention to omit to provide for his or her children, including (continued):

- declare any child claiming to be pretermitted take nothing; or
- specifically deny the existence of members of a class to which the claimant belongs coupled with a complete disposition of the estate.

Pretermitted or Intentionally Omitted?

- A failed bequest to a child named in a will does not, as a matter of law, render the child pretermitted.

Pretermitted or Intentionally Omitted?

- False statements by the testator in his or her will, whether knowingly false or not, that one or more of his or her children do not exist have resulted in several published opinions resolving the pretermitted heir claims of falsely denied heirs.

Pretermitted or Intentionally Omitted?

- False statement of lineage cases
 - *In the Matter of the Estate of Hester*, 1983 OK 93
 - *Rogers v. Estate of Pratt*, 2020 OK 27
 - *In Re Estate of Livsey v. Wood*, 2008 OK CIV APP
 - *Matter of Estate of Jones*, 2023 OK CIV APP 48

Pretermitted or Intentionally Omitted?

- Other cases of interest
 - Reference to “all relatives” in a specific bequest was sufficient to defeat pretermitted heir claim of daughter otherwise unnamed in will.
Matter of the Estate of Shepherd, 2023 OK CIV APP 24

Satisfying the Share of the Pretermitted Heir

- Applying 84 O.S. §133 to distribution.
- *Estate of Parker*, 2023 OK 50
- *But what about Rogers v. Pratt*, 2020 OK 27?

Asserting a Pretermitted Heir Claim

- A pretermitted heir is not required to file a claim to receive their statutory share.
- The probate court is obligated to protect the pretermitted heir's interest in the estate.
- A pretermitted heir claim does not implicate a “no contest” provision

Asserting a Pretermitted Heir Claim

- A valid decree of distribution bars a claimed pretermitted heir unless their rights are asserted in the administration proceedings.
Gassin v. McJunkin, 1935 OK 629
- Minors and 12 O.S. § 700
- *Matter of the Estate of Georges*, 2023 OK 123

Choice of Law

- Oklahoma law applies to the determination of rights of pretermitted heirs to Oklahoma property, regardless of residency of the decedent.

Non-Probate Assets

- The pretermitted heir statute applies only to wills; it does not apply to non-probate assets (e.g., inter vivos trusts).

Estate Planning Best Practices

- Include a “catch all” provision in the wills they draft as a last line of defense against claims of purported pretermitted heirs.

Estate Planning Best Practices

- “in the event any person whomsoever should contest the validity of this Will and establish in a court of competent jurisdiction that he or she is an heir of mine . . . then I hereby expressly...bequeath unto such person...the sum of \$5.00 and no more.”