

LEXSTAT MICH. COMP. LAWS 700.2114

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CHAPTER 700 REVISED PROBATE CODE
ESTATES AND PROTECTED INDIVIDUALS CODE
ARTICLE II. INTESTACY, WILLS, AND DONATIVE TRANSFERS
PART 1. INTESTATE SUCCESSION

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MCLS § 700.2114 (2003)

MCL § 700.2114

§ 700.2114. Parent and child relationship.

Sec. 2114. (1) Except as provided in subsections (2), (3), and (4), for purposes of intestate succession by, through, or from an individual, an individual is the child of his or her natural parents, regardless of their marital status. The parent and child relationship may be established in any of the following manners:

(a) If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for purposes of intestate succession. A child conceived by a married woman with the consent of her husband following utilization of assisted reproductive technology is considered as their child for purposes of intestate succession. Consent of the husband is presumed unless the contrary is shown by clear and convincing evidence. If a man and a woman participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their child for purposes of intestate succession.

(b) Only the individual presumed to be the natural parent of a child under subdivision (a) may disprove a presumption that is relevant to their relationship, and this exclusive right to do so terminates upon the death of the presumed parent.

(c) If a child is born out of wedlock or if a child is born or conceived during a marriage but is not the issue of that marriage, a man is considered to be the child's natural father for purposes of intestate succession if any of the following occur:

(i) The man joins with the child's mother and acknowledges that child as his child by completing an acknowledgment of parentage as prescribed in the acknowledgment of parentage act, *1996 PA 305, MCL 722.1001 to 722.1013*.

(ii) The man joins the mother in a written request for a correction of certificate of birth pertaining to the child that results in issuance of a substituted certificate recording the child's birth.

(iii) The man and child have established a mutually acknowledged relationship of parent and child that begins before the child becomes age 18 and continues until terminated by the death of either.

(iv) The man is determined to be the child's father and an order of filiation establishing that paternity is entered as provided in the paternity act, *1956 PA 205, MCL 722.711 to 722.730*.

(v) Regardless of the child's age or whether or not the alleged father has died, the court with jurisdiction over probate proceedings relating to the decedent's estate determines that the man is the child's father, using the standards and procedures established under the paternity act, *1956 PA 205, MCL 722.711 to 722.730*.

(2) An adopted individual is the child of his or her adoptive parent or parents and not of his or her natural parents, but adoption of a child by the spouse of either natural parent has no effect on either the relationship between the child and that natural parent or, except as provided in subsection (3), the right of the child or a descendant of the child to inherit from or through the other natural parent. An individual is considered to be adopted for purposes of this subsection when a court of competent jurisdiction enters an interlocutory decree of adoption that is not vacated or reversed.

(3) The permanent termination of parental rights of a minor child by an order of a court of competent jurisdiction; by a release for purposes of adoption given by the parent, but not a guardian, to the family independence agency or a licensed child placement agency, or before a probate or juvenile court; or by any other process recognized by the law governing the parent-child status at the time of termination, excepting termination by emancipation or death, ends kinship between the parent whose rights are so terminated and the child for purposes of intestate succession by that parent from or through that child.

(4) 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.

HISTORY: Act 386, 1998, p 1738; by § 8101 eff April 1, 2000.

Pub Acts 1998, No. 386, § 2114, by § 8101 eff April 1, 2000 (see § 700.8101).

Amended by Pub Acts 2000, No. 54, imd eff March 30, 2000, by enacting § 2 eff April 1, 2000.

NOTES:

Effect of amendment notes:

The 2000 amendment in subparagraph (1)(a), substituted "is" for "may be" before "void, the child"; in subparagraph (1)(b), substituted "their" for "to" before "relationship"; in subparagraph (1)(c), added "child's" before "natural father", deleted "of that child" after "natural father"; in subparagraph (1)(c)(i), added "child's", deleted "of the child" after "mother"; in subparagraph (1)(c)(ii), added "child's", added "." after "birth", deleted "of the child" after "birth."; added subparagraph (1)(c)(v).

Cross References:

Issue of marriages void by reason of consanguinity or insanity not illegitimate, § 552.1.
 Presumption as to legitimacy of children in case of divorce or dissolution of marriage, §§ 552.29–552.31.
 Acknowledgment of deed, § 565.8.
 Right of adopted person to inherit property, § 710.60.

LEXIS Publishing Michigan analytical references:

Michigan Law and Practice, Estates §§ 134, 137
 Michigan Law and Practice, Parent and Child §§ 1, 4

ALR notes:

Right of adopted child to inherit from kindred of adoptive parent, *43 ALR2d 1183*.
 Right of children of adopted child to inherit from adopting parent, *94 ALR2d 1200*.
 Inheritance by illegitimate from mother's other illegitimate children, *7 ALR3d 677*.
 Presumption of legitimacy of child born after annulment, divorce or separation, *46 ALR3d 158*.
 Legitimation by marriage to natural father of child born during mother's marriage to another, *80 ALR3d 219*.
 Effect of testamentary gift to child conditioned upon specified arrangements for parental control, *11 ALR4th 940*.
 Right of illegitimate grandchildren to take under testamentary gift to "grandchildren", *17 ALR4th 1292*.
 Adoption as precluding testamentary gift under natural relative's will, *71 ALR4th 374*.
 Adopted child as within class named in testamentary gift, *36 ALR5th 395*.

Research references:

2 Am Jur 2d, Adoption §§ 186 et seq
4 Am Jur 2d, Annulment of Marriage § 94
23 Am Jur 2d, Descent and Distribution §§ 62, 63
41 Am Jur 2d, Illegitimate Children §§ 105 et seq
78 Am Jur 2d, Wills § 1467
12 Am Jur Proof of Facts 2d 459, Determination of Heirship

Legal periodicals:

Raab, A Comparative Analysis Between the Uniform Probate Code and Michigan's Estates and Protected *Individuals Code*, 79 U Det Mercy L Rev 593 (2002).

Blotner, Third party custody and visitation: How many ways should we slice the pie?, 1989 Det CL Rev 161.

From coitus to commerce: Legal and social consequences of noncoital reproduction, 18 J of L Reform 865 (1985).

Love's labor lost: Legal and ethical implications in artificial human procreation, 58 U Det J Urb L 459 (1981).

Weber, Questions commonly asked of probate registers—And their answers, 6 MPEPJ 98 (No. 4, 1987).

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I. UNDER CURRENT LAW.

1-15. [Reserved for use in future supplementation.]

II. UNDER FORMER PROVISIONS.

A. Under Former § 700.110.

16. Construction, operation and effect.

Former § 702.86 prior to amendment, was not ambiguous and its obvious scope and purpose could not be extended by construction. *In re Loakes' Estate (1948) 320 Mich 674, 32 NW2d 10.*

Prior to amendment, kindred of adopting parents could not inherit real estate of adopted child who had died intestate. *In re Loakes' Estate (1948) 320 Mich 674, 32 NW2d 10.*

Where unmarried adopted child died intestate after death of adopting parents, and his blood relatives were unknown, while adopted child's personalty was properly distributed to brothers of adopting mother under former § 702.94, they were not entitled under former § 702.86, prior to amendment, to inherit his real estate, consisting of realty owned by adopting mother and adopted child as joint tenants with right of survivorship, and real estate escheated to the state. *In re Loakes' Estate (1948) 320 Mich 674, 32 NW2d 10.*

In view of the provisions of former §§ 702.86 and 702.68, which provided for distribution of intestate personalty, held

that where an adopted daughter, without husband or natural kindred, who died intestate, left personal property which came to her from her adoptive father, such property descended to the niece of the adoptive father, such niece being his only surviving relative, and did not escheat to the state under subdivision 5 of former § 702.80. *In re Schultz's Estate (1920) 212 Mich 682, 180 NW 460.*

17. Adopted child.

Determination of heirship is governed by statutes, including adoption statute, in effect at time of decedent's death. *In re Estate of Adolphson (1978) 403 Mich 590, 271 NW2d 511.*

Plaintiff who was adopted by second adoptive father after death of first adoptive father but before death of intestate deceased was not entitled to claim share in intestate decedent's estate through first adoptive father under adoption statute in effect at time of intestate decedent's death abolishing distinction between rights of natural progeny and adopted persons in regard to adoptive parent and providing that adopted person, after adoption, shall no longer be heir of natural parents, thereby rendering first adoptive father in effect natural parent through whom plaintiff's right to inherit was cut off at time of second adoption. *In re Estate of Adolphson (1978) 403 Mich 590, 271 NW2d 511.*

18. Property of adopted child.

Where unmarried adopted child died intestate after death of adopting parents, and his blood relatives were unknown, adopted child's personalty was properly distributed to brothers of adopting mother, under former § 702.94. *In re Loakes' Estate (1948) 320 Mich 674, 32 NW2d 10.*

Where an ex-soldier, carrying war risk insurance in which his adoptive mother was named as beneficiary, died in 1918 and installments due thereunder were paid to the beneficiary until her death in 1928, the unaccumulated installments which, by US Comp Stat § 9127-1/2-303 (38 USC 514), were made payable to the estate of the insured, went to his father as his heir in accordance with the statute existing at the time of the death of insured and not to the heirs of his adoptive mother in accordance with Pub Acts 1923, No. 225, § 1, which added subsection 8 to former section. *In re Dempster's Estate (1929) 247 Mich 459, 226 NW 243* (superseded by statute as stated in *In re Dodge Testamentary Trust (1982) 121 Mich App 527, 330 NW2d 72*).

Personal property of adopted child, dying intestate, passes to brothers or sisters by adoption. Op Atty Gen, February 28, 1945.

B. Under Former § 700.111.

19. Validity.

Unequal treatment of an illegitimate child and a child of a decedent's marriage in the distribution of the proceeds of an insurance policy is barred as a denial of equal protection of the laws where there has been a judicial determination of paternity. *Easley v John Hancock Mut. Life Ins. Co. (1978) 403 Mich 521, 271 NW2d 513.*

Constitutional mandate of equal protection of laws required equal sharing of group life insurance proceeds as between legitimate son of deceased insured and plaintiff who was adjudged to be child of deceased in paternity action several years earlier. *Easley v John Hancock Mut. Life Ins. Co. (1978) 403 Mich 521, 271 NW2d 513.*

A statute in effect on October 14, 1972, allowed an illegitimate child to inherit when his father died intestate only if his parents married subsequent to his birth or if the parents acknowledged him as their child in writing and recorded the writing; this statute is not unconstitutional since the United States Supreme Court has found that there are legitimate state interests which can justify treating legitimate and illegitimate children differently. *In re Blanco Estate (1982) 117 Mich App 281, 323 NW2d 671.*

20. Purpose and effect.

Child born out of wedlock becomes the legitimate child of its father, to all intents and purposes, upon his subsequent marriage to the mother, under statute in effect at time of marriage, later amendments having no bearing on question. *In re Karch's Estate (1945) 311 Mich 158, 18 NW2d 410.*

The purpose of former § 702.83 is to authorize the father of an illegitimate child to legitimize it without intermarrying with the mother. *In re Harper's Estate (1935) 272 Mich 476, 262 NW 289* (ovrld in part by *Easley v John Hancock Mut. Life Ins. Co. (1978) 403 Mich 521, 271 NW2d 513*) and (superseded by statute as stated in *In re Estate of Spencer (1985) 147 Mich App 626, 383 NW2d 266*).

The effect of former § 702.83 was to abrogate the common-law rule under which a person not born in lawful wedlock could not inherit as an heir of the father. *In re Harper's Estate (1935) 272 Mich 476, 262 NW 289* (ovrld in part by *Easley*

v John Hancock Mut. Life Ins. Co. (1978) 403 Mich 521, 271 NW2d 513) and (superseded by statute as stated in *In re Estate of Spencer (1985) 147 Mich App 626, 383 NW2d 266*).

The common-law disability of an illegitimate child to inherit having been removed by former § 702.81, the right of a child to inherit from his mother was not affected by his illegitimacy. *Garwols v Bankers' Trust Co. (1930) 251 Mich 420, 232 NW 239*.

At common law a child born out of wedlock did not inherit, being regarded as the son of nobody. *Kotzke v Kotzke's Estate (1919) 205 Mich 184, 171 NW 442*.

Illegitimate children were entitled under former § 702.81, to share as heirs at law in their mother's estate. *Watson v Von Derheide (1886) 61 Mich 595, 28 NW 726*.

The provisions of the statute permitting a child born out of wedlock to inherit as an heir of his or her father attempt to guard against specious claims by requiring that the father have made some acknowledgment during his lifetime that the claimant was his child; under the subsection of the statute dealing with the situation where there is no written acknowledgment during the father's lifetime, the Legislature has required that there be made before the eighteenth birthday of the child a mutual acknowledgment by the father and child of the biological relationship and that the acknowledged biological relationship continue until the death of either the father or the child. *In re Estate of Spencer (1985) 147 Mich App 626, 383 NW2d 266, app den (1986) 425 Mich 865*.

A parent has no power, merely by virtue of the parental relationship, to waive, release, or compromise claims of his or her child; an uncontested judgment of annulment of a marriage, stipulated to by the mother of a child, does not deprive the child of the opportunity for a hearing on the merits to decide whether the husband was the child's father for purposes of intestate succession. *In re Estate of Kinsella (1982) 120 Mich App 199, 327 NW2d 437*.

The express statutory requirements for considering a man to be the natural father of a child born out of wedlock implicitly exclude all other circumstances under which he might be so considered; under the statutory scheme a child born out of wedlock and after the death of his or her purported natural father cannot be determined to be the heir of the purported father for purposes of intestate succession. *In re Estate of Vellenga (1982) 120 Mich App 699, 327 NW2d 340*.

Mother, on behalf of her minor child born out of wedlock, was denied social security survivor benefits despite Michigan probate court's determination that her child was eligible to inherit from alleged father under liberally construed intestate succession laws because Secretary of Health and Human Services did not have to give complete deference to probate court and evidence supported conclusion that child was not heir at law under Michigan law. *Outwater for McClinchey v Secretary of Health & Human Servs. (1995, ED Mich) 894 F Supp 1114, 48 Soc Sec Rep Serv 886, CCH Unemployment Ins Rep P 15017B*.

21. Child resulting from adulterous relations.

An order of filiation including an order to pay child support may be enforced against the insurance proceeds of a policy on the life of the father after his death. *Easley v John Hancock Mut. Life Ins. Co. (1978) 403 Mich 521, 271 NW2d 513*.

The exception in the civil law that the offspring of adulterous relations cannot be legitimized has not been adopted by statute and it should not be adopted as an incident to the part adopted or as a matter of public policy. *Kotzke v Kotzke's Estate (1919) 205 Mich 184, 171 NW 442*.

A child born out of wedlock, at common law, was not permitted to inherit as an heir of his or her father. *In re Estate of Spencer (1985) 147 Mich App 626, 383 NW2d 266, app den (1986) 425 Mich 865*.

The statute permitting a child born out of wedlock to inherit as an heir of his or her father where both father and child mutually acknowledged their biological relationship before the child's eighteenth birthday and continued to acknowledge that relationship until the death of either does not require an ongoing social relationship, but rather requires only that there be sufficient evidence of a mutually acknowledged biological relationship and sufficient evidence that neither party renounced or terminated his or her acknowledgment of the relationship. *In re Estate of Spencer (1985) 147 Mich App 626, 383 NW2d 266, app den (1986) 425 Mich 865*.

Michigan's law of intestate succession presently allows an illegitimate child to inherit from his mother as if he were legitimate, however, he can inherit from his father only if his father acknowledges him as his child in writing, or if the father joins with the mother in a written request for a birth certificate correction, or if the father and child have mutually acknowledged a parent and child relationship between each other beginning before the child turns 18 and continuing until either's death; in addition, he can inherit from his father if, in a paternity suit, it is determined that the intestate is his father. *In re Blanco Estate (1982) 117 Mich App 281, 323 NW2d 671*.

Until child born during wedlock was adjudicated illegitimate, acknowledgment as provided in former § 702.83 could not be accepted by probate court. Op Atty Gen, September 16, 1946, No. 0-5050.

22. Paternity actions.

The Michigan Supreme Court has determined that an illegitimate child can inherit from his father who dies intestate if, in a paternity action, it is determined that the intestate is his father. *In re Blanco Estate (1982) 117 Mich App 281, 323 NW2d 671*.

The courts of Michigan will not permit an illegitimate child, or the child's mother, to wait until long after the death of a putative father to assert a paternity claim and then, without corroborating proof, make a finding that the putative father is the father of the child. *In re Blanco Estate (1982) 117 Mich App 281, 323 NW2d 671*.

23. Rights of widow of illegitimate.

Under former § 702.82, the widow of an illegitimate who had no parents, brothers or sisters, or their issue, living, took his estate in preference to relatives of his mother who were not her issue. *Keeler v Dawson (1889) 73 Mich 600, 41 NW 700*.

24. Descendant of illegitimate.

Under former § 702.81, the child of an illegitimate son, the latter dying before the death of his mother, would inherit the estate of the grandmother. *Goodell v Yezerski (1912) 170 Mich 578, 136 NW 451*.

25. Acknowledgment and recording.

An order of filiation including an order to pay child support may be enforced against the insurance proceeds of a policy on the life of the father after his death. *Easley v John Hancock Mut. Life Ins. Co. (1978) 403 Mich 521, 271 NW2d 513*.

In former § 702.83 the proviso for execution of the acknowledgment in the manner provided for deeds and for the recording thereof in the office of the judge of probate was a condition precedent which was required to be performed before the statute became operative. *In re Harper's Estate (1935) 272 Mich 476, 262 NW 289* (overruled in part by *Easley v John Hancock Mut. Life Ins. Co. (1978) 403 Mich 521, 271 NW2d 513*) and (superseded by statute as stated in *In re Estate of Spencer (1985) 147 Mich App 626, 383 NW2d 266*).

26. Evidence of legitimation.

Minor son of decedent's girlfriend was entitled to claim under wrongful death act since plaintiff hospital admitted to the parentage of the minor child and was therefor bound by it. *Turner v Grace Hosp. (In re Turner) (1997) 454 Mich 863, 560 NW2d 629*, reconsideration denied (1997, Mich) 564 NW2d 900.

In a proceeding to establish heirs, one claiming to be an illegitimate daughter of decedent failed to establish her right to heirship where the evidence tended to show that decedent executed an acknowledgment of parenthood as provided for in former section, but failed to show its recording as required by the proviso to such section. *In re Harper's Estate (1935) 272 Mich 476, 262 NW 289* (overruled in part by *Easley v John Hancock Mut. Life Ins. Co. (1978) 403 Mich 521, 271 NW2d 513*) and (superseded by statute as stated in *In re Estate of Spencer (1985) 147 Mich App 626, 383 NW2d 266*).

Prior to amendment, former § 702.83 requiring an acknowledgment of legitimacy of a child born out of wedlock after marriage of the parents, in order to make the child legitimate, required a general recognition of paternity. *Kotzke v Kotzke's Estate (1919) 205 Mich 184, 171 NW 442*.

Evidence held insufficient to show a general recognition of paternity after marriage of the parents so as to establish the legitimacy of a child, under the prior act. *Kotzke v Kotzke's Estate (1919) 205 Mich 184, 171 NW 442*.

A person who was born out of wedlock but for whom there has been a judicial determination that the person was the child of a man is entitled to share in the estate of that man as his child if he dies intestate. *In re Miller Estate (1994) 207 Mich App 19, 524 NW2d 246*.

Where child was born during wedlock and birth was certified as legitimate, it would be improper to receive acknowledgment of paternity under former § 702.83, since section applied only in cases of illegitimate births. Op Atty Gen, August 29, 1949, No. 1038.

27. Burden of proof.

Under former § 702.83, prior to amendment, to establish the legitimacy of a child born out of wedlock the burden was on him to show marriage of the parents and acknowledgment by the husband after marriage. *Kotzke v Kotzke's Estate (1919) 205 Mich 184, 171 NW 442*.

28. Collateral attack on partition decree.

A recital in a decree for partition that a specified party is entitled to share cannot be collaterally attacked even though

it be an adjudication that ought properly to have preceded the decree, and though the person named be illegitimate and therefore precluded by statute from claiming any part of the estate. *Persinger v Jubb* (1883) 52 Mich 304, 17 NW 851.

29. Mutually acknowledged parent-child relationship.

Child who was 32 days old at putative father's death could not be deemed natural child for purposes of intestate succession in absence of any evidence that child was capable of or manifested acknowledgement of relationship with putative father so as to come within statutory prerequisites that man and child have borne mutually acknowledged relationship of parent and child which began before child reached age 18 and continued until terminated by death of either. *In re Estate of Scharenbroch* (1991) 191 Mich App 215, 477 NW2d 436.