

NUMBER 04-325

COURT OF APPEAL, THIRD CIRCUIT

STATE OF LOUISIANA

JULIE GUIDRY, ET AL.

Plaintiffs - Appellants

Versus

COREGIS INSURANCE COMPANY, ET AL.

Defendants - Appellants

On appeal from the Fourteenth Judicial District Court [No.98-4848], for the Parish of Calcasieu, State of Louisiana; the Honorable G. Michael Canaday, District Judge, presiding.

Woodard, J., concurring, in part.

Given the uncertainty of how our supreme court would view the unusual circumstances in the instant case under the light of its *Turner v. Busby*¹ opinion, I am constrained to vote with the majority regarding Randi Guidry's legal status in her family. Namely, *Turner* addressed the rights of acknowledged illegitimate children, who are not biological children but did not, specifically, address how legitimated children in the same circumstances are to be treated. In fact, it intimated that perhaps its conclusion, that acknowledged illegitimate children could not recover wrongful death and survival damages under La.R.S. 2315.1 and 2315.2, would be different for legitimated children, as in Randi's situation.

Louisiana law classifies children as either legitimate, illegitimate, or legitimated.² Louisiana Civil Code provides methods for, both, formally acknowledging illegitimate children and for legitimating illegitimate children. Formal acknowledgment and legitimation are separate and distinct acts with different

¹03-3444 (La. 9/9/2004), 883 So.2d 412.

²*Id.*

effects and benefits flowing from each. Most importantly, legitimated children enjoy an added layer of protection from those who wish to attack the parent/child relationship. Specifically, the Civil Code explicitly permits, only, the father or if he is deceased, his heirs or legatees to seek to disavow a *legitimate* child's paternity.³ Conversely, La.Civ.Code art. 207 provides that “[e]very claim, set up by *illegitimate* children, may be contested by *those who have any interest* therein.” (Emphasis added).

In *Turner*, La.Civ.Code art. 207 permitted the defendants to attack McWright's claim because he was a formally acknowledged, *illegitimate* child. When he sought to prove that he was a proper party to recover wrongful death damages because the deceased had executed multiple acknowledgments of paternity for child support purposes, the defendants contested the existence of a biological relationship and argued that the acknowledgments were insufficient to elevate his status to a “child” for wrongful death purposes. Ultimately, DNA tests proved that no biological relationship, in fact, existed, and the supreme court deemed the formal acknowledgment to be a nullity because of this.

Before *Turner*, our jurisprudence, governing formal acknowledgments, held that “[w]hen the acknowledged fact is ultimately untrue, the acknowledgment *may* be null, *absent some overriding concern of public policy*.”⁴ This permitted courts some discretion. However, essentially, the supreme court's decision in *Turner* deletes the italicized language of prior jurisprudence, finding that “an Article 203 formal acknowledgment absent a biological relationship *is* a nullity.”⁵ (Emphasis added.)

Notwithstanding, the court highlighted the distinction between a formally acknowledged illegitimate child and a legitimated child. It concluded that the acknowledgment of paternity, at issue, lacked a *declaration of intent to legitimize* McWright, and “[w]ithout this declaration, the execution of the . . . stipulation did not legitimize McWright. Because McWright *was not a legitimize child* at the time this wrongful death and survival action commenced, *but rather a formally acknowledged illegitimated child* under Article 203, his claim *as an illegitimate child* may be subject

³La.Civ.Code art. 187; La.Civ.Code art. 190.

⁴*Rousseve v. Jones*, 97-1149, p.7 (La. 12/2/97), 704 So.2d 229, 233.

⁵*Turner*, 883 So.2d 412.

to scrutiny provided the defendants have probed all other requirements of Article 207.”⁶ (Emphasis added.)

This statement contemplates the possibility that, despite the absence of a biological relationship between him and the child, the deceased could have legitimated McWright, thereby, permitting his recovery of wrongful death benefits, if the deceased had declared his intention to do so.

Indeed, if the supreme court intended this distinction, it appears to contradict other portions of its *Turner* opinion which emphasize that a biological relationship is necessary for recovery. In support of its decision, the supreme court stressed that it is the biological relationship, rather than the legal status, which is determinative of whether a person is entitled to recover these damages. It specifically stated, “it is imperative that we uphold the critical requirement that the tort victim and the child have a biological relationship.” Consequently, the opinion gives us conflicting guidance in resolving Randi’s right to recover, particularly, when meshed with legislative dictates.

For example, the *Turner* opinion’s prohibition on a child’s recovery, based on no biological relationship, is inconsistent with our Civil Code which does not create classifications of biological versus non-biological children but rather, only, legitimate versus illegitimate children. The Code clearly contemplates the possibility that a child could prove legitimate filiation and receive the attendant benefits of this classification without having a biological relationship.

Louisiana Civil Code arts. 193 through 197 provide that a party can prove legitimation through, *inter alia*, “a transcript from the register of birth or baptism” or by *reputation*. Article 195 states, in pertinent part:

The being considered in this capacity is proved by a sufficient collection of facts demonstrating the connection of filiation and paternity which exists between an individual and the family to which he belongs.

The most material of these facts are:

That such individual has always been called by the surname of the father from whom he *pretends* to be born;

⁶*Id.* at 418.

(Emphasis added.) This language implicitly recognizes that legitimated children are not necessarily biological children. Moreover, none of the methods of legitimating a child require proof of a biological relationship.

The method Melvin chose to legitimate Randi is that provided in La.Civ.Code art. 198:

Illegitimate children are legitimated by the subsequent marriage of their father and mother, whenever the latter have formally or informally acknowledged them as their children, either before or after the marriage.

Melvin had elevated Randi's status to that of a "legitimated child" under all of the relevant codal provisions. By the time of the wrongful death suit, not only had he formally acknowledged her as his daughter through an Act of Acknowledgment of Paternity but, also, he had signed her birth certificate as her father and, subsequently, married her mother. Furthermore, she was his daughter by reputation. All of these affirmative acts, evidencing his intent, should provide her with an added layer of protection against attacks from third-party defendants, regarding her familial status.

Nevertheless, the dilemma for Randi is two-fold: She is not Melvin's biological child and the method Melvin chose to legitimate her is premised, in part, on an acknowledgment which, alone, the supreme court considers null absent a biological relationship. The unanswered question is whether this nullity can be cured and, if so, whether Melvin cured it by taking the next step of legitimating Randi.

Furthermore, there is an issue of whether the third-party Defendants, even, have standing to contest Randi's claim, given La.Civ.Code arts. 187 and 190. Essentially, these articles imbue, only, the "father" or his heirs with standing to strip a "child" of his or her legitimate status, which, in essence, is the foundation of these third-party defendants' claims in the instant case.

Given the apparent legislative intent, as well as Melvin's, it certainly does not seem appropriate or prudent for *Turner's* umbrella to be held over Randi's head, denying her benefits for the loss of the man she knew to be and treated as her father.