

To: New Jersey Law Revision Commission
From: Christian Weisenbacher
Date: November 6, 2017
Re: Abandonment and Inheriting from a Deceased Child's Estate — *In re Estate of Fisher*

MEMORANDUM

Executive Summary

In the case of *In re Estate of Fisher* the Supreme Court of New Jersey contemplated the case of an absent parent and considered whether the parent had abandoned his child and relinquished all parental rights, and whether he was thereby prevented from receipt of his deceased child's estate.¹ The court determined that the father in question had not abandoned his child, and in doing so construed the terms "abandoned" and "willfully forsaken" in a case of first impression.

Background

This case concerns the parents of Michael Fisher (Michael), now deceased, Michael D. Fisher, Sr. (Fisher), and Justina Nees.² The parents, Fisher and Nees, were married in 1994 and had only one child, Michael.³ The parties separated in April 2001 and shortly thereafter Nees obtained a Final Restraining Order (FRO) against Fisher after he attempted to remove Michael from school without first notifying her.⁴ The FRO ordered Fisher to submit to a risk assessment and to receive domestic violence counseling, but he did not appear for either.⁵

In November 2001, Fisher filed a motion seeking unsupervised parenting time with Michael.⁶ In January 2002, however, the court temporarily suspended Fisher's parenting time pending his enrollment in an anger management program and completion of an assessment by the "Family Court Assessment Team."⁷

In March 2002 the court entered a Final Judgment of Divorce which granted sole custody of Michael to Nees and suspended Fisher's parenting time until his compliance with the January order.⁸ Fisher did not fulfill his obligations under the January order and his visitation therefore

¹ *In re Estate of Fisher*, 443 N.J. Super. 180 (App. Div. 2015).

² *Id.* at 184.

³ *Id.* at 184.

⁴ *Id.* at 184.

⁵ *Id.* at 184.

⁶ *Id.* at 184.

⁷ *Id.* at 185.

⁸ *Id.* at 185.

continued in suspension.⁹ From January 2002 until Michael's death, Fisher did have occasional contact with Michael, including some telephone conversations and unplanned public meetings.¹⁰

In 2006 Fisher moved to Florida and in 2008 he developed significant health issues.¹¹ As a result of these issues, Fisher fell behind on his child support payments and in May 2010 filed a motion to decrease or terminate his child support obligation.¹² Fisher's motion was granted and while Nees moved to reinstate his obligation, Michael died before the issue resolved.¹³

Michael died intestate and his estate would have been split equally between Nees and Fisher were it not for N.J.S. 3B:5-14.1. Pursuant to that statute, Nees argued that Fisher had "abandoned" and "willfully forsaken" Michael by failing to maintain contact with Michael and failing to meet his child support obligations.¹⁴

Nees filed a complaint seeking to bar Fisher from his share of Michael's estate alleging that Fisher abandoned Michael after the couple divorced.¹⁵ Fisher denied abandoning his son and this case commenced.¹⁶ The trial judge granted Nees's request to bar Fisher from receiving a share of Michael's estate, finding that Fisher had abandoned Michael by willfully forsaking him.¹⁷

The trial court found in favor of Nees, stating that Fisher's actions and non-actions regarding Michael, his court-ordered obligations, and his child support obligations were intentional and therefore constituted willful forsaking.¹⁸ The appellate court reversed, stating "Nees did not demonstrate by a preponderance of the evidence that Fisher 'abandoned' his son 'by willfully forsaking' him."¹⁹

N.J.S. 3B:5-14.1 provides, in relevant part, that:

- b. A parent of a decedent shall lose all right to intestate succession in any part of the decedent's estate and all right to administer the estate of the decedent if:
 - (1) The parent refused to acknowledge the decedent or abandoned the decedent when the decedent was a minor by willfully forsaking the decedent, failing to care for and keep the control and custody of the decedent so that the decedent was exposed to physical

⁹ *Id.* at 185.

¹⁰ *Id.* at 185-6.

¹¹ *Id.* at 186.

¹² *Id.* at 186.

¹³ *Id.* at 186.

¹⁴ *Id.* at 188.

¹⁵ *Id.* at 188.

¹⁶ *Id.* at 188.

¹⁷ *Id.* at 188-90.

¹⁸ *Id.* at 190.

¹⁹ *Id.* at 202.

or moral risk without proper and sufficient protection, or failing to care for and keep the control and custody of the decedent so that the decedent was in the care, custody and control of the State at the time of death...

The central question in the instant case was the interpretation of the terms “abandoned” and “willfully forsaking” in the statute above. The Appellate Division examined case law interpreting N.J.S. 9:6-1, in which almost identical language is used. Its analysis of prior cases interpreting the language of N.J.S. 9:6-1 led the Court to state the following:

In order for a court to conclude that a parent has ‘abandoned’ his or her child ‘by willfully forsaking’ him or her under N.J.S. 3B:5-14.1(b)(1), the court must find that the parent, through his or her unambiguous and intentional conduct, has clearly manifested a settled purpose to *permanently* forego *all* parental duties and relinquish *all* parental claims to the child.²⁰

This sets a particularly high standard to be met to bar parents from inheriting from their child’s estate.

A review of the legislative history revealed that the Sponsor’s Statement attached to the bill resulting in N.J.S. 3B:5-14.1 shows that the Legislature intended the language to “eliminate a parent’s right to inherit from the estate to their child if the parent abused, abandoned, neglected, endangered the welfare of, or committed any sexual offense against the minor child.”²¹ The statement gave no additional guidance as to the nature of the language.

The court here specifically noted the “long-standing canon of statutory construction that presumes that the Legislature is knowledgeable regarding the judicial interpretation of its enactments.”²² However, given the realities and difficulties of legislative work, and the absence of explicit legislative guidance on the wording in question, it may nonetheless be prudent to alert the Legislature to the definition of N.J.S. 3B:5-14.1(b)(1) as it has been understood in the instant case.

Conclusion

Staff seeks authorization to engage in further research and outreach in order to determine if it would be appropriate to revise the statute to clarify the meaning of “willfully forsake” in the specific context of N.J.S. 3B:5-14.1(b)(1). The lack of explicit legislative guidance and the complex and consequential nature of the statute may make its clarification both expedient and appropriate.

²⁰ *Id.* at 197-8.

²¹ Sponsor’s Statement to S. 1640, at 4 (May 5, 2008).

²² *Id.* at 196.