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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION EIGHT

Estate of MERLE JOHNSON, Deceased.

B237915

JANENE CURTIS,

(Los Angeles County  
Super. Ct. No. BP101192)

Petitioner and Appellant,

v.

EVE O'NEILL,

Objector and Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County.  
Mitchel L. Beckloff, Judge. Reversed.

James A. Frieden for Appellant.

Borden Law Office, Alex R. Borden and Priya Bahl for Respondent.

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Janene Curtis appeals from the probate court's summary judgment awarding her aunt all the proceeds from the settlement of an action for the wrongful death of Curtis's father on the ground that Curtis's adoption by other parents shortly after her birth forever cut off her intestate succession inheritance rights. Because there were triable issues of fact that the aunt was equitably estopped from asserting the statutory provisions that arguably cut off Curtis's inheritance, we reverse the judgment.

### **FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

Janene Curtis was adopted within days of her birth in 1964. In 1987, she tracked down her birth mother, who directed Curtis to her biological father, Merle Johnson, best known by his stage name: Troy Donahue. Donahue quickly accepted Curtis as his daughter and established a close relationship with Curtis and her children. Curtis and her children would visit Donahue and stay at his Santa Monica home, and he would visit them and stay at their home. They took vacations together, and Donahue frequently and publicly referred to Curtis as her daughter.<sup>2</sup>

Donahue introduced Curtis to his sister, Eve O'Neill, and paid for Curtis and her children to visit O'Neill at her home in Nebraska. O'Neill referred to Curtis as her niece, and asked that Curtis refer to her as Curtis's aunt. Correspondence between Curtis and O'Neill was also warm and affectionate.

Donahue died in 2001 without making a will. After Donahue's death, his long-time friend Jane Nunez told Curtis that Donahue's death might have been caused by the prescription painkiller Vioxx, whose manufacturer was the defendant in a New Jersey class action lawsuit. Curtis hired a New York law firm to represent her in that

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<sup>1</sup> Our recitation of the facts is made in accord with the summary judgment standard of review, which we discuss in the section with that heading.

<sup>2</sup> The record includes numerous photos of Donahue with Curtis and his grandchildren. It also includes affectionate birthday cards and other correspondence Donahue sent them. The facts surrounding the warm and loving nature of Donahue's relationship with Curtis and his acknowledgement that she was his daughter are not disputed.

action. Because Curtis was living in Arizona, the firm recommended she find someone living in the Los Angeles area to act as administrator of Donahue's estate for purposes of the Vioxx litigation.

Curtis contacted O'Neill, who had moved to Southern California. O'Neill agreed to act as administrator of the estate and retained lawyer Alex Borden to represent the estate. At O'Neill's request, Curtis advanced Borden \$1,700. In October 2006, O'Neill filed a petition prepared by Borden asking to be appointed the administrator of Donahue's estate. The petition, signed by O'Neill under penalty of perjury, said that Donahue was survived by a daughter, and identified Curtis as that daughter. The petition included a document signed by Curtis, as Donahue's daughter, nominating O'Neill as administrator of her father's estate. One month later, Borden prepared and filed a supplement to the petition stating that the only asset of the estate was the Vioxx damage claim and that Donahue's "*daughter* waives bond, and if necessary, will file a Waiver of Bond . . . ." (Italics added.) The court granted the petition in January 2007.

In August 2009, Curtis directed her lawyers in the Vioxx litigation to accept a settlement of just under \$300,000, which would result in a net payment to the estate of \$190,000. In July 2010, O'Neill filed a petition prepared by Borden to determine that she alone was entitled to the settlement proceeds. O'Neill's supporting declaration said she was informed that Curtis claimed she was Donahue's biological daughter, but had never been given proof of that claim. O'Neill said she became aware during her administration of the estate that Curtis had been adopted shortly after birth. O'Neill argued that even if Curtis was in fact Donahue's biological daughter, the adoption cut off her right to inherit by intestate succession.

Curtis filed a competing petition to determine that she was entitled to the settlement proceeds because: (1) even though her inheritance rights were severed by her adoption (Prob. Code, § 6451), they were restored when Donahue had her stay in his home and held her out publicly as his daughter (Fam. Code, § 7611, subd. (d)); and (2) O'Neill was estopped from asserting Curtis's statutory inability to inherit

because O’Neill promised Curtis that she would act as administrator of the estate only in order to assist Curtis, and that any settlement proceeds would belong to Curtis.

O’Neill then filed a summary judgment motion, contending there were no triable issues of fact on Curtis’s estoppel argument, and that Curtis’s inheritance rights were terminated as a matter of law due to her adoption and could not be restored. To the extent there was a factual dispute, it centered on Curtis’s estoppel argument.

According to Curtis’s declaration, when she asked O’Neill if she would serve as estate administrator, O’Neill “readily agreed and promised me that if any money was awarded to my father’s estate, I would get it all because, as Mrs. O’Neill stated, ‘I know that your father would have wanted it that way.’” Curtis said she would give O’Neill some unspecified portion of any recovery from the Vioxx litigation. O’Neill said that “would be fine, but that she didn’t expect any money.” In reliance on O’Neill’s assurances that Curtis would receive the full amount of any recovery, Curtis pursued the claim. This included 160 hours spent obtaining Donahue’s medical records, communicating with counsel, and handling various paperwork. She also paid \$1,700 to attorney Borden at O’Neill’s request in reliance on these representations.

After settling the Vioxx litigation, Curtis told O’Neill she would give her \$10,000 for assisting with the case. O’Neill initially accepted, but a few months later “said that her children and friends were telling her that the arrangement was not fair and that she should not go forward with it.” O’Neill told Curtis she loved her, but cut off all communication after that time.

Curtis’s summary judgment opposition was also supported by the declaration of Donahue’s close, long-time friend Jane Nunez. Nunez had discussions with Curtis and O’Neill about suing the maker of Vioxx. During those conversations, O’Neill said Donahue would want Curtis to have the money from any settlement. According to Nunez, Curtis agreed “to do much of the work involved in finding a lawyer . . . and getting medical records. She agreed to pay the up-front costs of the suit and of the probate of Troy’s estate.” O’Neill agreed that “while her name would be on the case

because she lived in California and there was a question of whether Janene could inherit because she had been adopted, the case would be brought in [O'Neill's] name for [Curtis's] benefit.”

Nunez said that O'Neill phoned her in January 2010 and said her children told her to keep most of the settlement money for herself. Nunez told her that she should “honor the initial agreement.”

The main evidentiary support for O'Neill's summary judgment motion was her own declaration. According to O'Neill, she knew Donahue had been taking Vioxx and believed the drug caused his death. She and her son discussed taking part in the class action pending against the drug's manufacturer. Curtis phoned her about five years after Donahue died and said she was interested in joining the class action. Curtis told O'Neill that the New York law firm Curtis had contacted said Curtis could not pursue the action without documentation that she was Donahue's daughter. O'Neill agreed to represent Donahue's estate in a probate proceeding, but “made no promise to Curtis that she was to receive all proceeds of the Vioxx Litigation. Curtis and I had no discussion on the issue of how the settlement proceeds . . . , should any be recovered, would be distributed. At this early stage, such discussions would be speculative as there was no determination of any amounts of recovery.”

According to O'Neill, Curtis acted without consulting her and without legal authority in contacting the New York Vioxx litigation lawyers and accepting the settlement. Curtis contacted her in January 2010 in an attempt “to obtain an agreement with me concerning the disposition of the settlement proceeds. I had no knowledge of the amount of settlement at this time and made no agreement as to the acceptance of an offer from Curtis.” O'Neill argued that there were no triable issues of fact concerning the existence of an estoppel because: (1) Curtis failed to show a sufficiently specific promise concerning the distribution of the settlement proceeds; and (2) because Curtis had been adopted, she had no intestate succession inheritance rights and therefore no standing to pursue a wrongful death claim, meaning that she gave up no legal right and therefore suffered no injury.

The trial court found that Curtis's adoption barred her from inheriting under Probate Code section 6451, and that because she lacked standing to bring a wrongful death claim, she had not shown the injury or change of position required to establish an estoppel.

### **STANDARD OF REVIEW**

Summary judgment is granted when a moving party establishes the right to the entry of judgment as a matter of law. (Code of Civ. Proc., § 437c, subd. (c).) In reviewing an order granting summary judgment, we must assume the role of the trial court and re-determine the merits of the motion. In doing so, we must strictly scrutinize the moving party's papers. The declarations of the party opposing summary judgment, however, are liberally construed to determine the existence of triable issues of fact. All doubts as to whether any material, triable issues of fact exist are to be resolved in favor of the party opposing summary judgment. While the appellate court must review a summary judgment motion by the same standards as the trial court, it must independently determine as a matter of law the construction and effect of the facts presented. (*Doe v. Salesian Society* (2008) 159 Cal.App.4th 474, 478.)

A defendant moving for summary judgment meets its burden of showing that there is no merit to a cause of action if that party has shown that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (Code of Civ. Proc., § 437c, subds. (o)(2), (p)(2).) If the defendant does so, the burden shifts back to the plaintiff to show that a triable issue of fact exists as to that cause of action or defense. In doing so, the plaintiff cannot rely on the mere allegations or denial of his pleadings, "but, instead, shall set forth the specific facts showing that a triable issue of material fact exists . . . ." (Code of Civ. Proc., § 437c, subd. (p)(2).) A triable issue of material fact exists "if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v.*

*Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) We must consider all the evidence, along with all the inferences that can be reasonably drawn from it, and must view the evidence in the light most favorable to the party opposing summary judgment. (*Faust v. California Portland Cement Co.* (2007) 150 Cal.App.4th 864, 877.)

## **DISCUSSION**

Adoption severs the parent-child relationship and, with certain exceptions, an adopted child loses her right to inherit by intestate succession from her natural parents. (Prob. Code, §§ 6450, 6451, subd. (a)(1), (2); *Phraner v. Cote Mark, Inc.* (1997) 55 Cal.App.4th 166, 170-171 (*Phraner*).) Curtis agrees that her adoption severed the child-parent relationship with Donahue and that none of the statutory exceptions applied to her. Instead, she argued that her status as a natural child was restored when Donahue received her into his home and openly held her out as his natural child. (Fam. Code, § 7611, subd. (d) [receiving child into the home and holding her out openly as natural child creates presumption of natural parentage].)

Curtis also contended below that even if she was wrong about the effect of Family Code section 7611, O'Neill was equitably estopped to rely on Probate Code section 6451 by her promises to undertake the role of administering Donahue's estate in order to allow Curtis to receive all the proceeds from the Vioxx litigation settlement.

The doctrine of equitable estoppel is codified in Evidence Code section 623, which states: "Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it." A party claiming an estoppel must prove four elements: (1) the party to be estopped must know the facts; (2) the estopped party must intend that his conduct shall be acted upon, or must act in a way that causes the other party to believe that was his intent; (3) the party asserting estoppel must be unaware of the true facts;

and (4) he must detrimentally rely on the other party's conduct. (*Estate of Bonanno* (2008) 165 Cal.App.4th 7, 22 (*Bonanno*).)

If an estoppel is established, the estopped party is deprived of applicable rights or defenses. (*Bonanno, supra*, 165 Cal.App.4th at p. 22.) The doctrine has been applied to questions of intestate succession. In *Bonanno*, the decedent's estranged wife, daughter, and girlfriend, settled their dispute about their respective rights to inherit by intestate succession. The wife then petitioned the probate court to let her portion of the estate pursuant to the settlement pass to her without administration through the probate court. The probate court granted the petition based on statutes that provided the wife the right to do so because the settlement agreement did not state she was exercising her right under companion statutes to have her portion of the estate administered. The *Bonanno* court reversed, holding that the effect of the ruling was to reduce the size of the estate and therefore the fees that the daughter could recover as the long-time estate administrator. Because the wife benefitted from the daughter's service as administrator, the court held the wife was estopped to assert her right to administer separately her portion of the estate. (*Id.* at pp. 21-23.)

In *Changaris v. Marvel* (1964) 231 Cal.App.2d 308, the decedent's children joined in a wrongful death action with a woman who claimed to be decedent's wife.<sup>3</sup> They settled with the defendant, and their lawyer interpleaded the funds after the children contended the woman had not legally married their father. As a result, they contended, she was not entitled to inherit and therefore was not entitled to bring a wrongful death claim. The trial court found that the children were estopped to challenge the woman's rights, and the Court of Appeal agreed. Underlying the Court of Appeal's holding was evidence that the children knew beforehand of the facts that cast doubt on the validity of the marriage but agreed to let the woman join in the

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<sup>3</sup> *Changaris* was disapproved on another ground by *Corder v. Corder* (2007) 41 Cal.4th 644, 658-659.)

action and take part in the settlement, combined with the fact that allowing the woman to join in enhanced the amount of the settlement. (*Id.* at pp. 314-315.)

Here, the probate court ruled that the inheritance bar of Probate Code section 6451 could not be overcome by the presumption of natural parent status supplied by Family Code section 7611. It also found that no triable fact issues existed as to just one of the estoppel elements – detrimental reliance. According to the trial court, because Curtis had no right to inherit by intestate succession, she gave up nothing when she farmed out the role of estate administrator to O’Neill and therefore suffered no harm. Assuming for discussion’s sake only that the probate court was correct that the Family Code presumption did not restore the parent-child relationship and concomitant intestate succession rights lost by Curtis’s adoption, we conclude the trial court erred by finding that as a matter of law O’Neill was not estopped to assert that fact.<sup>4</sup>

On appeal, O’Neill limits her estoppel argument to the detrimental reliance element.<sup>5</sup> She relies solely on *Phraner, supra*, 55 Cal.App.4th 166 as directly analogous authority for her contention that Curtis suffered no harm. The plaintiff in *Phraner* was adopted days after her birth. She sued for the wrongful death of her natural mother, with whom she maintained a relationship. The trial court granted summary judgment because the severance of the parent-child relationship at the time of adoption meant the plaintiff was not an heir of the decedent and therefore lacked standing to sue for wrongful death. The *Phraner* court affirmed, but only on statutory

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<sup>4</sup> As a result, we do not reach the issue of statutory interpretation.

<sup>5</sup> Wisely so. Although O’Neill’s summary judgment motion argued that she was entitled to all the settlement proceeds from the Vioxx litigation, she admitted at her deposition that she agreed to at least split any recovery with Curtis, with the precise ratio left to future agreement. She also admitted that Curtis paid her \$1,700 at her request to fund the probate proceedings and said she would not return the money because her monthly income was too low. According to O’Neill, O’Neill paid only \$20 towards the probate proceedings. Finally, she acknowledged that she became aware Curtis had been adopted before Donahue died.

interpretation grounds. (*Id.* at pp. 170-171.) The decision does not mention, much less consider, the concept of estoppel, and it is therefore inapplicable.

The issue here is not whether Curtis could inherit from Donahue by intestate succession in the abstract. Instead, the issue is whether there were triable fact issues that O'Neill is estopped from asserting that Curtis has no such rights because Curtis was prejudiced by her reliance on O'Neill's statements and conduct. We conclude such triable issues exist.

In holding that the wife in *Bonanno, supra*, was estopped from asserting her right to avoid administration of her portion of the estate, the *Bonanno* court discussed not just the benefits the wife had gained by having the daughter administer the estate for years, it also mentioned the burdens this had placed on the daughter. These included: gathering, inventorying, and valuing the estate property, paying the estate's creditors and taxes, defending actions against the estate and instituting actions for its benefit, and otherwise accepting responsibility for administering the estate. (*Bonanno, supra*, 165 Cal.App.4th at p. 23.) While the court did not expressly mention the detrimental reliance element of estoppel when describing these facts, it obviously had that element in mind.

We believe that Curtis incurred analogous burdens. Although Curtis did not administer Donahue's estate, she took on the work of gathering evidence and handling documents necessary to prove the wrongful death claim that was the sole reason for the estate's existence in probate court. According to Curtis, this required 160 hours of her time. Furthermore, instead of taking on the administration of the estate, Curtis gave up her opportunity to do so based on O'Neill's assurances, and paid O'Neill \$1,700 to cover the estate's legal costs. The estate attorney who received those fees gained approval for O'Neill to act as administrator based on unqualified statements under penalty of perjury that Curtis was Donahue's daughter. After the Vioxx litigation settled, the same attorney, acting on O'Neill's behalf, petitioned the probate court for all the settlement proceeds, contending for the first time that Curtis had no right to inherit them. As a result, Curtis has been compelled to enforce the promises

that O'Neill made concerning Curtis's right to receive the settlement funds, thereby incurring more legal fees and costs. Despite all this, O'Neill refuses to return Curtis's \$1,700. This evidence clearly raises triable fact issues concerning tangible detriment to Curtis in reliance on O'Neill's statements and conduct.

### **DISPOSITION**

The summary judgment is reversed. Appellant shall recover her appellate costs.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

SORTINO, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.