

REFORMING INTESTATE INHERITANCE FOR STEPCHILDREN AND STEPPARENTS*

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INTRODUCTION

Just as *The Brady Bunch*¹ replaced *Leave It to Beaver*,² blended families are replacing the traditional family in America, as the shift toward blended families places new tension on traditional intestacy laws.³ Almost two-thirds of all remarriages involve children,⁴ and studies estimate that more than one-half of all Americans have lived in, are currently living in, or will live in, a stepfamily.⁵ Blended families now comprise half the nation.⁶

Unfortunately, although the characteristics of American families have changed, the law has been slow to follow. Currently, stepchildren and stepparents are “virtually excluded from intestate succession.”⁷ Intestacy statutes provide for the disposition of a decedent’s probate property when a decedent dies without a will or the will does not dispose of all the decedent’s property.⁸ The Uniform Probate Code (“UPC”) was drafted over thirty years ago, at a time when blended

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¹ The Internet Movie Database (IMDB), *The Brady Bunch*, <http://www.imdb.com/title/tt0063878/> (last visited Dec. 16, 2009) (*The Brady Bunch* is an American television show which revolves around a large blended family. The show originally aired during the 1970s).

² James Poniewozik, *The 100 Best TV Shows of ALL-TIME*, TIME, available at <http://www.time.com/time/specials/2007/completelist/0,,1651341,00.html> (last visited on Dec. 16, 2009) (*Leave It to Beaver* is a 1950s and 1960s family-oriented American television show that attained an iconic status in the United States, with the Cleaver family exemplifying the idealized suburban traditional family of the mid-twentieth century).

³ For purposes of this Article, a traditional family refers to a man and woman who are married and living with their biological children as a family.

⁴ Naomi R. Cahn, *Adoptees, Families, Stepfamilies and Inheritance*, 8 ADOPTION QUARTERLY, no. 2, 57, 60.

⁵ *Id.*

⁶ *Trends in Marriage and Divorce*, CENTERS FOR DISEASE CONTROL AND PREVENTION (July 24, 2002) http://www.cdc.gov/nchs/pressroom/02news/div_mar_cohab.htm.

⁷ RALPH C. BRASHIER, INHERITANCE LAW AND THE EVOLVING FAMILY 158 (2004).

⁸ UNIF. PROBATE CODE § 2-101 (2010).

families were the exception rather than the norm. Article II of the UPC, addressing intestacy statutes and parent-child relationships, has not progressed with the changing demographics of American society.⁹ Few states acknowledge stepchildren in their intestacy statutes,¹⁰ and the states that *have* modified their stepfamily inheritance laws have failed to effect comprehensive reform. California, the first state to acknowledge stepchildren in its intestacy statute, is the most progressive state with respect to this issue, but even California does not allow stepparents or other family members to inherit from the stepchild.¹¹ Thus, while a few states have tried, all have fallen short of adequately providing for a stepfamily in the case of intestacy.

The current stepfamily state statutes and UPC fall short of achieving the purpose of intestacy statutes: to satisfy the likely intent of the decedent of a blended family and care for his or her family. Given the high rate of divorce and the increasing frequency of parent-child relationships between stepparents and stepchildren, the UPC and state statutes should be revised to better meet the intent of many decedents with blended families and avoid the problems inherent in the current intestacy statutes' limitations.

Part I provides a brief background of the current intestacy law in the United States, focusing on the UPC as the main source of law. Then, Part II discusses how the UPC and state statutes, except for California, do not have provisions that allow for stepchildren to inherit when the stepparent dies in testate. It then explores the California statute allowing for limited stepchild inheritance based upon a two-factor test but explains that this statute, while definitely a positive step forward, is inadequate to accurately reflect American society today.

In Part III, this Article proposes a statute consisting of a series of factors that courts can use to determine whether a parent-child relationship existed between the stepparent and stepchild for intestacy purposes. The proposed factors statute ("factors test") allows states and the UPC to address the needs of the modern American culture of blended families by better effectuating decedents' intent and by alleviating part of the burden placed on the state when it is charged with providing for the family of a decedent. While the factors test creates some administrative costs, the benefit of effectuating intent is served by requiring judicial intervention to determine whether a parent-child relationship existed between the

⁹ *Id.*

¹⁰ *See, e.g.*, CONN. GEN. STAT. ANN. § 45a-439(a)(4) (West 2009) (allowing a stepchild to inherit when there are no issue, parents, or issue of parents); MD. CODE ANN., Est. & Trusts § 3-104(e) (West 2010); OHIO REV. CODE ANN. § 2105.06(J) (West Supp. 2010); S.C. CODE ANN. § 62-2-103(6) (2010) (allowing a stepchild to inherit when there are no issue, parents, or issue of parents, grandparent, issue of grandparent, great grandparent, or issue of great grandparent). Other states allow issue of a predeceased spouse to inherit to avoid escheat. *See, e.g.*, ARK. CODE ANN. § 28-9-215(2) (2010); IOWA CODE ANN. § 633.219(6) (West 2010); KY. REV. STAT. ANN. § 391.010(6) (West 2010); MO. REV. STAT. § 474.010(3) (2010).

¹¹ *See* CAL. PROBATE CODE § 6454 (West 2010).

stepparent and stepchild for intestacy purposes. Some state and federal legislatures and judiciaries already evaluate the parent-child relationship in other blended family contexts; therefore, applying the factors test for intestacy purposes is a natural extension of a body of law that already exists.

I. INTESTACY LAW

What a decedent does not dispose of by will passes by intestacy.¹² While each state passes intestacy statutes, some choose to enact the UPC as their intestacy statute.¹³ In 1969, the UPC drafters created the UPC in an effort to “make uniform the law among the various jurisdictions.”¹⁴ Approximately eighteen states adopted the UPC in its entirety, while the remaining states adopted portions of it.¹⁵ The primary goal of intestacy statutes is to carry out a decedent’s presumed intent by reference to the average person’s intent concerning the disposition of his or her property at death.¹⁶ For example, most intestacy statutes leave all of a decedent’s possessions to his or her surviving spouse if the decedent had no children.¹⁷ Many consider intestacy statutes as providing a backup will that should carry out the wishes of most decedents.¹⁸ However, intestacy statutes do not attempt to determine a decedent’s *actual* intent.¹⁹

In addition to carrying out *presumed* intent, intestacy statutes are used to assist the state by supporting the decedent’s family, both financially and emotionally. Financially, the intestacy statutes of most probate systems contain a provision, in which the spouse and dependent children receive most, if not all, of the estate. From the state’s perspective, intestacy statutes help keep families solvent and from needing government assistance.²⁰ Under the UPC, any portion of the intestate estate that does not pass to the surviving spouse passes in the following order: (1) descendants of the decedent; (2) if no surviving descendant, to the decedent’s parents; (3) if no surviving descendant or parent, to the decedent’s siblings; or (4) if there is no surviving descendant, parent or sibling, to the decedent’s grandparents.²¹ Finally, if none of the individuals identified above survive the decedent, the estate passes to the state.²² Intestacy statutes provide

¹² UNIF. PROBATE CODE § 2-101 (2010).

¹³ *In re Estate of Collins*, 142 A.2d 178, 181 (Pa. 1958).

¹⁴ UNIF. PROBATE CODE § 1-102(b)(5) (2011).

¹⁵ American Bar Association, *Uniform Laws Update*, 23-APR PROB. & PROP. 10, 10 (2009); Andrew L. Noble, *Intestate Succession for Stepchildren in Pennsylvania: A Proposal for Reform*, 64 U. PITT. L. REV. 835, 837-38 (2003).

¹⁶ Noble, *supra* note 15, at 836-37; Susan N. Gary, *The Parent-Child Relationship Under Intestacy Statutes*, 32 U. MEM. L. REV. 643, 651 (2002).

¹⁷ *See, e.g.*, Fla. Stat. Ann. § 732.102 (West 2010).

¹⁸ Gary, *supra* note 16, at 651.

¹⁹ *Id.*

²⁰ *See, e.g.*, UNIF. PROBATE CODE § 2-402 (amended 2008).

²¹ UNIF. PROBATE CODE § 2-103 (2010).

²² UNIF. PROBATE CODE § 2-105 (2010).

emotional as well as financial support by identifying heirs as persons who are *entitled* to a distribution from the decedent's estate. For some, having the state identify them as a family member validates that person's relationship with the decedent, thereby providing emotional support.²³

Because intestacy statutes typically distribute a decedent's property to the decedent's family,²⁴ when a statute does not address a person whom the decedent considers a family member, such as a stepchild, intent effectuation vanishes. Formal legal relationships, such as marriage, adoption or biological relations, rather than emotional relationships, typically define family members.²⁵ As a result, intestacy statutes may exclude persons who consider themselves family members when in actuality the decedent may have preferred those persons as recipients of the decedent's property. For example, a stepchild who is not formally adopted by his or her stepparents is not a legal family member, even if the child was raised by the stepparent from infancy and calls him or her "mom" or "dad." Therefore, in the case of blended families, intestacy statutes often fall short of effectuating the intent of many decedents, and may fail to provide for the decedent's familial obligations.²⁶

II. THE UPC AND STATE STATUTES REGARDING STEPCHILDREN'S INTESTACY RIGHTS

A. *The Absence of Stepchildren in the UPC Intestacy Provisions*

Since its inception, the UPC has not addressed the prospect of stepchild inheritance in any context other than that of a stepparent entering into a legal parent-child relationship by adopting a stepchild.²⁷ The UPC defines a child as "an individual entitled to take as a child under this Code by intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild"²⁸ The UPC uses the term "parent-child relationship" to indicate the existence of intestacy rights.²⁹ Subsequent revisions to Article II of the UPC have been adopted to address changing family situations. Nevertheless, the most recent revisions still fail to include the intestacy rights of stepchildren within a possible

²³ Gary, *supra* note 16, at 652.

²⁴ Susan N. Gary, *We are Family: The Definition of Parent and Child for Succession Purposes*, 34 ACTEC L. J. 171, 172 (2008).

²⁵ See, e.g., UNIF. PROBATE CODE §§ 2-102 (Share of Surviving Spouse), 2-103 (Share of Heirs Other Than Surviving Spouse), 2-115 (Parent and Child Relationship) (2008).

²⁶ Gary, *supra* note 16, at 651.

²⁷ See, e.g., UNIF. PROBATE CODE § 2-119(b) (amended 2008) ("A parent-child relationship exists between an individual who is adopted by the spouse of either genetic parent and: (1) the genetic parent whose spouse adopted the individual; and (2) the other genetic parent, but only for purposes of the right of the adoptee or a descendant of the adoptee to inherit from or through the other genetic parent").

²⁸ UNIF. PROBATE CODE § 1-201(5) (amended 2006).

²⁹ Sheldon F. Kurtz & Lawrence W. Waggoner, *The UPC Addresses the Class-Gift and Intestacy Rights of Children of Assisted Reproduction Technologies*, 35 ACTEC L. J. 30, 32 (2009).

parent-child relationship. Conversely, the UPC revisions detail intestacy rights for adoptive children and children born through assisted reproduction technologies (“ART”).³⁰ Children born through ART may be born to a surrogate carrier or be conceived through the use of an egg or sperm donor.³¹ The use of ART creates situations in which no common DNA exists between a parent and a child, yet the UPC does not require formal adoption for children conceived through ART. Unlike the stepchildren provisions, even though no common DNA may exist between the “parent” and the child, the UPC assisted reproduction sections do not require the parent to adopt the child in order for a parent-child relationship to be recognized.³² Therefore, the UPC is amenable to the possibility of a child who is neither the parent’s biological child, nor the parent’s legally adopted child, inheriting from that parent. The UPC should explicitly provide that stepchildren could inherit from stepparents who die intestate.

The absence of intestacy statutes that would allow stepchildren and stepparents to inherit from one another raises the question of why stepchildren and stepparents cannot inherit through intestacy based on relationship alone? One reason may be because individuals can choose to opt out of the intestacy system by writing a will or by disposing of property using other avenues, such as titling property in multiple names. Finally, some may argue that the UPC does not intend to create a statute that requires a court to intercede and evaluate a relationship because doing so would increase administrative costs, while a mechanical test would promote efficiency.

However, these rationales fail when further evaluated. For one, the unique dynamics of a blended family could make stepparents less likely to draft a will. Furthermore, the UPC allows courts to administer relationship-based tests. Section 2-114 of the UPC precludes inheritance from or through a child if the child’s biological parent has not recognized or treated the child as his or her child or has refused to support the child.³³ In other words, a biological parent who has never acknowledged his or her child cannot inherit from that child under the UPC. This Article proposes a similar test to determine whether a stepparent has treated the stepchild as a child and vice versa. Because the UPC has already opened itself to judicial scrutiny in terms of a parent-child relationship in section 2-114,³⁴ it could easily open the stepparent-stepchild relationship to similar judicial scrutiny to determine whether intestate succession would be proper under the circumstances.

Regardless of the reason for the UPC’s silence on stepchildren as heirs, the

³⁰ UNIF. PROBATE CODE §§ 2-120, 2-121 (amended 2008).

³¹ *Id.*

³² Kurtz, *supra* note 29, at 32.

³³ UNIF. PROBATE CODE § 2-114 (amended 2008) (“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”).

³⁴ *Id.*

UPC and the individual states must bring their statutes in line with the social changes that American families have experienced by including blended families in their provisions. As divorce, remarriage, and blended families become more prevalent in society, American families will continue to have a growing need for intestacy statutes that specifically address their precise circumstances.

B. California – Limited Stepchild Inheritance

In 1983, California enacted the first state statute to treat³⁵ the stepparent-stepchild relationship as a parent-child relationship for purposes of intestate succession. The California statute looks to whether: (1) the relationship began during the child's minority and continued throughout the joint lifetimes of both the stepchild and stepparent, and (2) the stepchild has established by clear and convincing evidence that the stepparent would have adopted the stepchild but for a legal barrier.³⁶ The California Fourth District Court of Appeals first interpreted the meaning of a "relationship," as required in the first prong of the stepchild inheritance statute, in *In re Estate of Claffey*.³⁷ The court reasoned that the legislative intent for inheritance of stepchildren was to provide for a relationship between a stepchild and stepparent that resembles that of natural parent and child in the sense of family relationship rather than just a stepparent-stepchild relationship.³⁸ In other words, the relationship must "encompass something more than an exchange of wedding vows between a natural [parent] and a stranger."³⁹

While there is a general consensus among the California courts regarding the meaning of the first prong of the statute, the second prong fails to specify the timing and duration of the legal barrier requirement, which has caused a circuit split in the California Courts.⁴⁰ The most common legal barrier in this context occurs when the legal parent who is not married to the stepparent refuses to allow the stepparent to adopt the child. Thus, the imprecise language of section 6454 is one of the statute's primary weaknesses.

The California appellate courts developed two positions concerning the interpretation of a legal barrier as required by the second prong of section 6454.⁴¹ One appellate court has held that a natural parent's refusal to give up his or her title at the time of adoption constitutes a legal barrier.⁴² Another appellate court has

³⁵ CAL. PROB. CODE § 6408(e) *repealed by* CAL. PROB. CODE § 6454 (West 2009).

³⁶ *Id.*

³⁷ *In re Estate of Claffey*, 257 Cal. Rptr. 197 (Cal. Ct. App. 1989).

³⁸ *Id.*

³⁹ *Id.* at 258.

⁴⁰ *See* CAL. PROB. CODE § 6454 (West 2010).

⁴¹ Cynthia R. Hirschl, *Stepchildren and Inheritance Rights*, 1 U.C. DAVIS J. JUV. L. & POL'Y 36, 38 (1996).

⁴² *See In re Estate of Stevenson*, 14 Cal. Rptr. 2d 250, 257 (Cal. Ct. App. 1992) (holding that legal barrier at time of attempted adoption is sufficient); *In re Estate of Lind*, 257 Cal. Rptr. 853, 859 (Cal. Ct. App. 1989) (suggesting that legal barrier existing only at time of attempted adoption is sufficient); *In re Estate of Claffey*, 257 Cal. Rptr. 197, 198-99 (Cal. Ct. App. 1989) (restating trial court's finding that,

held that a legal barrier only meets the statute's requirements if it prevents the adoption until the death of the stepparent.⁴³ To resolve the appellate courts' divergence, the California Supreme Court held that the legal barrier requirement meant that the legal barrier to adoption must persist until the stepparent's death.⁴⁴ Additionally, even where a legal barrier defeated repeat adoption attempts throughout the child's adulthood, section 6454 would not apply if no legal barrier to adoption existed during the child's minority, or if for any reason the decedent had not possessed an intent to adopt during that period.⁴⁵ Section 6454 would also not apply if there had been any period of time, regardless of how brief, when no legal barrier to adoption had existed.⁴⁶

Although the California statute is the nation's most progressive concerning stepchildren and inheritance rights, it does not reflect the realities of American society because stepparent adoptions do not occur in most stepfamilies.⁴⁷ The statute falls short of providing for stepparents and stepchildren who have a parent-child relationship but did not undergo formal adoption proceedings. The California Supreme Court's narrow interpretation of the legal barrier requirement significantly limits the utility of the entire statutory provision. After a stepchild reaches the age of majority, the stepchild can give consent to an adoption, thereby eliminating the primary legal barrier to adoption. However, adoption of an adult stepchild, regardless of the relationship's strength, is unlikely.⁴⁸ The California statute fails to recognize that a meaningful parent-child relationship can exist without the intent or desire to legally recognize the relationship through adoption.⁴⁹ In its current form, the statute is limited in that it applies only in situations when a stepparent dies before the stepchild reaches the age of majority.⁵⁰ Furthermore, the California statute only speaks to stepchildren inheritance and does not create rights in the stepparent to inherit from the stepchild, or rights in the stepchild's descendants.

Until California's statute, no state allowed a stepchild to inherit from a stepparent.⁵¹ Since the California statute's enactment, a few other states have allowed a stepchild to inherit from an intestate stepparent;⁵² however, stepchild inheritance through intestacy typically only occurs as a last resort in order to avoid

although stepchildren had reached majority, natural parent's refusal to consent was legal barrier).

⁴³ See *In re Estate of Cleveland*, 22 Cal. Rptr. 2d 590, 597 (Cal. Ct. App. 1993) (holding that when only legal barrier is refusal of stepchild's natural parent to consent to adoption, stepparent's failure to adopt once stepchild becomes adult bars stepchild's claim).

⁴⁴ See *Barnum-Smith v. Joseph (Estate of Joseph)*, 949 P.2d 472 (Cal. 1998).

⁴⁵ *Id.* at 488.

⁴⁶ *Id.*

⁴⁷ Cahn, *supra* note 4, at 60.

⁴⁸ Susan N. Gary, *Outline of the Parent-Child Relationship Under Intestacy Statutes*, ASSOCIATION OF AMERICAN LAW SCHOOLS (Mar. 31, 2001), <http://www.aals.org/profdev/family/gary.html>.

⁴⁹ Gary, *supra* note 16, at 671.

⁵⁰ See, e.g., *In re Estate of Cleveland*, 22 Cal. Rptr. 2d 590, 597 (Cal. Ct. App. 1993).

⁵¹ Susan N. Gary, *Adapting Intestacy Laws to Changing Families*, 18 LAW & INEQ. 1, 57-58 (2000).

⁵² RALPH C. BRASHIER, *INHERITANCE LAW AND THE EVOLVING FAMILY* 157 (2004).

the estate passing to the state.⁵³ Generally, the instances in which stepchildren inherit from their intestate stepparents are uncommon.⁵⁴ While California was progressive in its recognition of changing family dynamics and inclusion of stepchildren in its intestacy statutes, the current California statute and the few states that have followed still lag behind the reality blended families experience today.

C. Equitable Adoption: Inadequate Solution for Inheritance by Stepchildren

Regardless of whether a state has an applicable statute, as California does, the issue of stepchildren inheriting through intestacy still arises because of the prevalence of blended families in the United States. Statutory solutions do not exist in most states, and thus more than half of the states' courts have turned to equitable adoption as a solution to the issue of stepchild inheritance.⁵⁵ Equitable adoption is a judicially created doctrine that allows the court to treat a child as though he or she were adopted by a foster parent or stepparent who contracted to adopt the child but did not complete the adoption.⁵⁶ Some courts have applied the doctrine even though an express contract to adopt did not exist.⁵⁷ However, given the high level of subjectivity inherent in the doctrine, arguments for stepchild inheritance based on equitable adoption have rarely prevailed.⁵⁸ In most jurisdictions, a successful equitable adoption claim requires the foster child to show there was a promise to adopt.⁵⁹ Because a stepparent's relationship with his or her stepchild is not a presumed promise to adopt, the equitable adoption frequently fails.⁶⁰ Consequently, the states need a solution, such as the factors test, that courts can use to allow inheritance in intestate blended family situations.

⁵³ OHIO REV. CODE ANN. § 2105.06(J) (West 2011) (provides that when a decedent leaves no next of kin and the decedent's property would otherwise pass to the state, the decedent's property shall be distributed "to stepchildren or their lineal descendants").

⁵⁴ See, e.g., CONN. GEN. STAT. ANN. § 45a-439(a)(4) (West 2011) (allowing a stepchild to inherit when there are no issue, parents, or issue of parents); MD. CODE ANN., EST. & TRUSTS § 3-104(e) (West 2011); OHIO REV. CODE ANN. § 2105.06(J) (West 2011); S.C. CODE ANN. § 62-2-103(6) (2010) (allowing a stepchild to inherit when there are no issue, parents, or issue of parents, grandparent, issue of grandparent, great grandparent, or issue of great grandparent). Other states allow issue of a predeceased spouse to inherit to permit escheat. See, e.g., ARK. CODE ANN. § 28-9-215(2) (West 2011); IOWA CODE ANN. § 633.219(6) (West 2009); KY. REV. STAT. ANN. § 391.010(6) (West 2009); MO. REV. STAT. § 474.010(3) (2009).

⁵⁵ Cahn, *supra* note 4, at 64; Michael J. Higdon, *When Informal Adoption Meets Intestate Succession: The Cultural Myopia of the Equitable Adoption Doctrine*, 43 WAKE FOREST L. REV. 223, 225 (2008).

⁵⁶ *Id.* For example, a stepparent contracted to adopt the child, but the contract could not be executed because the child's natural parent did not consent.

⁵⁷ R. Brent Drake, *Status or Contract? A Comparative Analysis of Inheritance Rights Under Equitable Adoption and Domestic Partnership Doctrines*, 39 GA. L. REV. 675, 727 (2005).

⁵⁸ Higdon, *supra* note 55, at 226, 256.

⁵⁹ *Id.* at 260.

⁶⁰ See, e.g., *Pierce v. Pierce*, 645 P.2d 1353, 1355 (Mont. 1982) (holding that a step-father could not adopt his step-child by "equitable adoption").

III. GOING BEYOND THE EXISTING STATUTES: A FACTORS TEST

A considerable amount of variability exists in stepparents' roles, and thus a factors test is the best approach to a statute concerning whether a parent-child relationship exists between a stepparent and stepchild.⁶¹ The stepparent-stepchild relationship is the most complex and challenging relationship within the stepfamily context.⁶² A mechanical test, although easily administrable, lacks viability, as the complexities involved in a relationship would be oversimplified and would likely fail to meet the intent of the stepparent and stepchild. Because of these complexities, the existence of a stepparent and stepchild relationship alone should not guarantee inheritance rights under intestacy statutes; rather the UPC and states should examine elements of the relationship with the following factors test:

Determination of whether a parent-child relationship existed for intestacy purposes between stepchildren and stepparents shall be made by evaluating all of the factors affecting the interests of the particular child and the circumstances of that family, including:

- a) The age of the child at the time the stepparent entered the stepchild's life. Stepparents who enter into a stepchild's life after the stepchild has reached the age of majority are unlikely to have a parent-child relationship.
- b) The length of the marriage between the stepparent and legal parent.
- c) Whether the decedent stepparent had any living legal children who survived the decedent, and how the stepchild and stepparent relationship compares to the legal child and stepparent relationship.
- d) Whether the stepchild helped care for the stepparent as though he or she was a legal parent as the stepparent aged.
- e) The frequency of contact between the stepparent and stepchild throughout their lives.
- f) Whether the stepchild referred to the stepparent as "Mom" or "Dad" around the stepchild's friends.
- g) The stepparent would have adopted the stepchild but for a legal barrier during the stepchild's childhood.
- h) Following the death of a legal parent, the stepchild lived with the stepparent.
- i) The stepchild lived with the stepparent following the divorce of the stepparent from the stepchild's legal parent.
- j) Whether the stepchild was a minor and primarily financially supported by the stepparent at the time of the stepparent's death.

⁶¹ Paul Schrodt, *The Stepparent Relationship Index: Development, Validation, and Associations with Stepchildren's Perceptions of Stepparent Communication Competence and Closeness*, 13 PERSONAL RELATIONSHIPS 167, 167-68 (2006).

⁶² *Id.* at 170.

For purposes of this statute, a “legal parent” is defined as a child’s biological or adoptive parent. A “legal child” is defined as a parent’s biological or adopted child.

A. Rationale for Each of the Proposed Statute’s Factors

Factor (a), the age of the child at the time the stepparent-stepchild relationship began, is an important element in determining whether a decedent would have intended for a stepparent or stepchild to inherit through intestacy. Generally, older stepparents spend little time with their adult stepchildren, and neither person may be motivated to develop a relationship.⁶³ Thus, stepchildren often may not consider stepparents acquired later in life to be family members.⁶⁴ Additionally, research demonstrates that adolescent and young adult stepchildren avoid more topics of discussion with their stepparents than they do with their natural parents or friends, which may hinder the development of a substantive relationship.⁶⁵ A stepparent is unlikely to form a parent-child relationship with a stepchild who does not share information regarding his or her life and feelings. Consequently, factor (a) would help discern the likelihood of whether the stepparent-stepchild relationship resulted in feelings of a parent-child relationship and kinship obligations that would compel inheritance.⁶⁶

The length of a marriage between a stepparent and legal parent serves as a discernable reference point for the courts by demonstrating the length of time over which a parent-child relationship could have formed. Longer-term step-relationships are often defined as kinship ties.⁶⁷ The factors test includes factor (b) because a longer marriage creates a greater opportunity for a stepparent to create a parent-child relationship with a stepchild. In fact, studies demonstrate that a stepchild is less likely to have a relationship with a newly acquired stepparent.⁶⁸ A factors test is particularly appropriate with factor (b) because while the length of a relationship between a stepparent and stepchild is an important element of a parent-child relationship, studies have not definitively determined “how long the relationship between older stepparents and adult stepchildren has to exist . . . before

⁶³ Lawrence Ganong & Marilyn Coleman, *Obligations to Stepparents Acquired in Later Life: Relationship Quality and Acuity of Needs*, 61B, No. 2 J. OF GERONTOLOGY: SOCIAL SCIENCES S80, S86 (2006) (The study conducted by Ganong and Coleman used a sample of 487 men and 571 women from across the United States. The mean age was 43.5 years (range ¼ 17–94 years). More than half (n ¼ 716) had children, and 165 were stepparents).

⁶⁴ *Id.* at S80.

⁶⁵ Paul Schrodt, *supra* note 61, at 169 (Schrodt’s study included 522 young adult stepchildren from four different states who completed an inventory assessing key dimensions of the stepparent-stepchild relationship, as well as stepchildren’s perceptions of stepparents’ communication competence and closeness. The results produced the Stepparent Relationship Index). *Id.* at 171.

⁶⁶ Ganong & Coleman, *supra* note 63, at S81.

⁶⁷ *Id.* at S86.

⁶⁸ *Id.* at S81.

step relationships are seen as kinship ties.”⁶⁹ Naturally, “the invisible bonds of loyalty that connect parents and children across the life course apparently do not apply to relatively recent stepparent–stepchild ties.”⁷⁰ Factor (b) closely relates to factor (a) as “stepchildren who develop a relationship with their primary stepparents at an earlier age, as well as those who have been members of their stepfamilies for longer periods of time, may be somewhat more likely to grant a primary stepparent parental authority,” a sign that indicates the existence of a parent-child relationship.⁷¹

Factor (c) takes into account whether a decedent stepparent has any surviving legal children in addition to the stepchild. Legal children of a stepparent in question can be helpful when analyzing whether a parent-child relationship existed between a stepparent and stepchild. First, the stepparent and legal child serve as an indicator of how a true parent-child relationship with the stepparent as a parent figure would appear. Through the comparison of a parent-child relationship between the stepparent and his or her legal child and the stepparent and his or her stepchild, a court may be able to discern whether a parent child relationship existed between the stepparent and the stepchild. Furthermore, the existence of a legal child may make a stepparent less likely to want his or her stepchildren to inherit in lieu of or in addition to a legal child. This is a consideration the court should take into account in concert with the other parent-child relationship factors.

Factor (d), whether the stepchild helped care for the stepparent as the stepparent aged, indicates the responsibility and closeness a stepchild feels towards a stepparent. Generally, people perceive themselves as having greater responsibilities to assist family members, particularly parents, in old age.⁷² In making judgments about assistance exchanged in step-relationships, emotional closeness or relationship quality is the most salient element. If the stepchild is emotionally close with a stepparent, the stepchild will likely care for the stepparent as the stepparent ages.⁷³ Study participants demonstrated that emotional closeness might indicate whether step-relationships involved familial bonds that carried familial obligations.⁷⁴ Close bonds between stepparents and stepchildren increase the likelihood that family members and others define the relationship as quasi-biological and thus would want the stepparent or stepchild to inherit through intestacy.⁷⁵

Because stepparents who are genuinely interested in establishing and maintaining a parent-child like relationship with their stepchild are likely to

⁶⁹ *Id.* at S86.

⁷⁰ *Id.*

⁷¹ Schrod, *supra* note 61, at 180.

⁷² Ganong & Coleman, *supra* note 63, at S82.

⁷³ *Id.* at S82.

⁷⁴ *Id.*

⁷⁵ *Id.*

maintain close contact with the stepchild, the factors test incorporates factor (e).⁷⁶ Consequently, effort on the part of both the stepparent and stepchild occurs well beyond the formation of the stepfamily.⁷⁷ The inclusion of factor (e) allows the possibility of a parent-child relationship existing between a stepparent and stepchild even if the stepparent divorces the legal parent. In examining the frequency of contact between the stepparent and stepchild throughout their lives, a parent-child relationship may be discerned. Factor (e) also incorporates the element of who had custody over the stepchild during the stepchild's childhood because the stepchild will have a greater frequency of contact with his or her custodial parent and stepparent. Therefore, factor (e), continued and frequent contact between the stepparent and stepchild, can be a telling element as to whether a parent-child relationship existed prior to one party's death.

Research demonstrates that factor (f), whether the stepchild referred to the stepparent as "mom" or "dad" when speaking with his or her friends, indicates the role the stepparent played in the stepchild's life.⁷⁸ Children who refer to their stepparent as "mom" or "dad" likely had a stepparent who guided and enforced household rules, disciplined their stepchildren as children of their own, and gave their stepchildren advice on how to live their lives.⁷⁹ These actions by the stepparent indicate a stepparent fulfilling the parent role in a parent-child relationship with a stepchild.

The factors test modifies the second prong of section 6454 of the California Probate Code to develop factor (g), which states that the stepparent would have adopted the stepchild but for a legal barrier during the stepchild's childhood. As discussed, section 6454 fails to fulfill the intent of many stepparent or stepchild decedents. The California Supreme Court's interpretation that a legal barrier must exist until the death of the stepparent is underinclusive.⁸⁰ Consequently, the factors test modifies section 6454. The inclusion of the provision that the legal barrier must exist through the stepchild's childhood eliminates the primary cause of the California circuit split and avoids the California Supreme Court's underinclusive interpretation of the legal barrier requirement. The factors test requires a legal barrier to exist through the stepchild's legal childhood, rather than through the death of either the stepparent or stepchild because stepparents rarely adopt adult children for a variety of reasons, such as there being no need to adopt when an emotional relationship already exists.⁸¹ Thus, whether a stepparent would have adopted a stepchild but for a legal barrier should be one of the factors taken into account by the statute.

⁷⁶ Schrod, *supra* note 61, at 169.

⁷⁷ *Id.*

⁷⁸ *Id.* at 174.

⁷⁹ *Id.*

⁸⁰ *Barnum-Smith v. Joseph (Estate of Joseph)*, 949 P.2d 472, 488 (Cal. 1998).

⁸¹ Cahn, *supra* note 4, at 60.

Factors (h) and (i) indicate a parent-child relationship because when a stepchild continues to reside with a stepparent after the death of or divorce from the legal parent, the relationship between the stepparent and stepchild becomes the same as that of a legal parent and a child.⁸² Moreover, a step-relationship particularly replicates a parent-child relationship when the other legal parent is alive, yet the child chooses to remain with the stepparent. This type of relationship suggests a conclusion that the stepparent would want and intend for the stepchild to inherit as if the stepchild were a legal child.⁸³

The final factor—whether the stepchild was a minor and primarily financially supported by the stepparent at the time of the stepparent's death—is discernible by the court and has been implemented in part under the federal Social Security Act.⁸⁴ By providing a stepchild's primary financial support, the stepparent demonstrates a parental responsibility towards that child that the stepparent is not obligated to perform.⁸⁵ In shouldering the financial burden of a stepchild, the stepparent assumes the role of a mother or father.⁸⁶ As such, in following the federal statute's lead, a stepparent who financially supports a stepchild under factor (j) meets an element of a parent-child relationship with that stepchild.

The factors test surpasses other intestacy statutes by addressing the blended family's social culture in America. It is broader than existing statutes, in that it would allow stepchildren to inherit from stepparents, and stepparents to inherit from stepchildren after a close examination of their relationships. Furthermore, there is scientific research to support each of the factors as an element that is properly used to determine whether a parent-child relationship exists.

B. Stepparents' Assumptions

Frequently, a stepparent may not adopt a child because the child's other legal parent—the parent not married to the stepparent—does not want to relinquish his or her parental rights. While this legal barrier disappears once the child reaches the age of majority, the stepparent remains unlikely to adopt the stepchild because the rights and responsibilities between a parent and child change substantially once the child becomes a legal adult.⁸⁷ In other words, the relationship can continue without

⁸² Noble, *supra* note 15, at 848.

⁸³ *Id.* Furthermore, in contemplating the value of factor (h), consider a situation in which a father is widowed leaving children. He remarries and dies intestate. His wife, the children's stepparent, would take. Consequently, if the stepmother died intestate, unless she had formally adopted these children, the children could not inherit from their stepmother what she received from their father under current intestacy statutes. Had the father not remarried, the children would have been the first to inherit. Factor (h) addresses this problem.

⁸⁴ 42 U.S.C. § 402(d)(1) (2011).

⁸⁵ Laura Wish Morgan, *The Duty of Stepparents to Support their Children*, DIVORCE LITIGATION (May 19, 2002), <http://childsupportguidelines.com/articles/art199908.html>.

⁸⁶ *Id.*

⁸⁷ See *Barnum-Smith v. Joseph (Estate of Joseph)*, 949 P.2d 472, 488 (Cal. 1998) (George, C.J., dissenting) (arguing that requiring that the barrier exist only during the child's minority makes sense

concerns regarding visitation and custody because the child is able to choose whether or not to continue a relationship with the stepparents. That a stepchild voluntarily continues to spend time with a stepparent evidences that a parent-child relationship exists, which should allow for inheritance. This idea is recognized under factor (e) of the factors test. Yet, none of the current state statutory provisions consider this factor.

Even if no legal barrier to adoption exists, a stepparent with a close relationship to the child still may not adopt the child because the stepparent does not feel the need to change an already strong relationship, particularly once the child has reached the age of majority. Stepparent reluctance may be caused by the requirements of existing adoption laws, which often do not recognize the possibility of continuing emotional relationships between the child and the parent, whose rights must be terminated in order for the adoption to occur.⁸⁸ Stepparents may also simply procrastinate or want to avoid the added cost when their family has been functioning well without the legal title. Finally, a stepparent may not want to adopt a stepchild because he or she respects the child's legal parents, or has a good relationship with the child's other legal parent but still considers the child one of his or her own. In cases of remarriage in which the new spouse—stepparent—has no children of his or her own, the stepparent likely considers the child a family member and an heir regardless of adoption status. Consequently, this child has three meaningful child-parent relationships: relationships with the legal father, legal mother, and stepparent.

Stepparents face complex emotional issues as they sort out and create family relationships. “Stating inheritance rights in a [will] may raise issues that stepparents and their spouses would rather avoid.”⁸⁹ Although their avoidance causes adverse affects under the existing intestacy statutes,⁹⁰ people often operate under the false assumption that their “family” will inherit under the intestacy statutes.⁹¹ Consequently, the decedent fails to draft a will because he or she inaccurately assumes that their concept of family, which includes stepchildren, will fall within the intestacy statutes' definition of a family.

In each of the above situations, stepparents are raising children even though they are not legal parents. Thus, the fact that these family members have functioned as a family suggests that each would prefer that the other inherit as if

because the majority's interpretation precludes most stepchildren from meeting the requirements of the statute).

⁸⁸ Cahn, *supra* note 4, at 60.

⁸⁹ Gary, *supra* note 16, at 650.

⁹⁰ *Id.*

⁹¹ Monica K. Johnson & Jennifer K. Robbennolt, *Using Social Science to Inform the Law of Intestacy: The Case of Unmarried Committed Partners*, 22 LAW & HUM. BEHAV. 479, 489 (1998) (“analyzing results of the survey reported in Fellows et al, *Public Attitudes*, Johnson and Robbennolt report that more than 30% of persons with opposite-sex partners and more than 40% of persons with same-sex partners incorrectly assumed that their unmarried partners would inherit a share of their estate under the intestacy laws that applied to them”).

they were legally related, rather than merely looking at the stepfamily as serving a functional purpose.⁹² However, “current intestacy statutes make no provision for these family members.”⁹³ The statutory definitions of heirs continue to be based on adoption or biological relationships. None of the intestacy systems look to whether the parent and child functioned as a family, which would likely more closely align itself to the decedent’s testamentary intent.⁹⁴

C. Parent-Child Relationships are Already Examined

1. Existing Judicial Parent-Like Relationship Tests

The factors test combats the under-inclusive intestacy laws by expanding the definition of parent and child to include stepparents who functioned in a parent-child relationship. Although this proposal is unique for intestacy purposes, various courts have incorporated similar parent-like tests for purposes such as custody and visitation issues. Therefore, the factors test, although unique in applicability, is not unique to the court system, which frequently examines relationships to discern whether a parent-like relationship exists. Consequently, the implementation of the factors test would not face numerous barriers because it furthers an analysis to which courts have become accustomed.

Courts currently use relationship tests similar to the factors test to examine other aspects of blended families. Although courts have not specifically evaluated a parent-like relationship in the context of intestacy for stepchildren, several cases have focused on the functional parent-child relationship and the importance to the child of maintaining a relationship with someone who has acted as a parent when considering visitation rights.⁹⁵ The Supreme Court of Massachusetts defines a “de

⁹² Gary, *supra* note 16, at 665.

⁹³ *Id.* It is only a matter of time before the absence of stepchildren inheritance through intestacy surfaces in the context of gay and lesbian blended families. Up to nine million American children under the age of eighteen have at least one gay or lesbian parent. That figure includes children who were born through reproductive technologies and as a result only have a legal relationship with their biological mother, but were raised since birth with their mother’s homosexual partner. These children can only inherit by intestacy from their biological parent, even though the couple was together beginning with the child’s pregnancy through the rest of its life. Sarah Kaye & Katherine A. Kovalanka, *State Gay Adoption Laws and Permanency for Foster Youth*, MARYLAND FAMILY POLICY IMPACT SEMINAR (May 2006), http://www.sph.umd.edu/fmsc/_docsContribute/GayadoptionbriefFINAL0806.pdf. As more states recognize marriage or civil unions between same sex partners, the issue of same sex stepparents and intestacy rights will be of great importance. Particularly because the acknowledgement or allowance of same sex marriage does not necessarily mean that the same sex couple will be permitted to adopt, creating a legal barrier to adoption. *See, e.g., In re Angel Lace M.*, 516 N.W.2d 678 (Wis. 1994).

⁹⁴ *See* CAL. PROB. CODE § 6454 (West 2011); UNIF. PROBATE CODE § 2-101 (2011); CONN. GEN. STAT. ANN. § 45a-439(a)(4) (West 2011); MD. CODE ANN., EST. & TRUSTS § 3-104(e) (West 2011); OHIO REV. CODE ANN. § 2105.06(J) (West Supp. 2011); S.C. CODE ANN. § 62-2-103(6) (2010); ARK. CODE ANN. § 28-9-215(2) (2011); IOWA CODE ANN. § 633.219(6) (West 2011); KY. REV. STAT. ANN. § 391.010(6) (West 2011); MO. REV. STAT. § 474.010(3) (2011).

⁹⁵ *See, e.g., J.A.L. v. E.P.H.*, 682 A.2d 1314, 1320 (Pa. Super. Ct. 1996) (stating that where a strong psychological relationship exists between the child and a third party who has “in the child’s eye a stature like that of a parent” then “the child’s best interest requires that the third party be granted standing”).

facto parent” as “one who has no biological relation to the child, but has participated in the child’s life as a member of the child’s family.”⁹⁶ The Supreme Court of Wisconsin created a four-part test to determine whether a “parent-like relationship” exists with a child.⁹⁷ To prove a parent-like relationship, the petitioner must show that the legal parent consented to and fostered the relationship, that the petitioner and the child resided in the same household, that the petitioner assumed responsibilities of parenthood and helped care for the child, and that the petitioner’s parental role had existed for a length of time sufficient to have developed a parental relationship with the child.⁹⁸ The New Jersey Supreme Court adopted this four-part test in 2000 and interpreted the statutory definition of “parent” to include a psychological parent for visitation purposes.⁹⁹ Florida has also incorporated in its statutes a list of twenty relationship factors to determine the custodial parent following a divorce.¹⁰⁰ A test for a parent-like relationship between the stepchild and parent is the best solution for allowing stepchildren to inherit through the intestacy statutes.

2. Inheritance Rights of Stepchildren Already Recognized in Other Arenas

Other areas of law already consider stepchildren natural inheritors of their stepparents. The Social Security Act (“the Act”) provides benefits to dependent children of deceased parents who at death were fully insured under the Act.¹⁰¹ Under the Act, a child includes “a stepchild who has been such stepchild for not less than one year immediately preceding the day on which application for child’s insurance benefits is filed or, if the insured individual is deceased, not less than nine months immediately preceding the day on which such individual died. . . .”¹⁰² The Act looks to the length of the relationship and recognizes that a stepparent may have had some financial responsibility to the stepchild, as factors (b) and (j) do in the factors test. The Act, and similarly, the factors test could easily be likened to one of the purposes behind intestacy statutes: supporting the family.

Individual state laws also contain provisions for stepchildren upon the death of a stepparent. Section 1407 of the Pennsylvania Worker’s Compensation Act defines children to include stepchildren who are members of the decedent’s household at the time of death.¹⁰³ In the case of death due to an occupational disease, section 1407 provides for computation of compensation based on whether a spouse survives the decedent and the number of children who survive decedent.

⁹⁶ E.N.O. v. L.M.M., 711 N.E.2d 886, 891 (Mass. 1999) (explaining that the legal parents’ interests must be balanced with the child’s interest in maintaining a relationship with the de facto parent).

⁹⁷ Holtzman v. Knott (*In re* Custody of H.S.H.-K), 533 N.W.2d 419, 421 (Wis. 1995).

⁹⁸ *Id.*

⁹⁹ V.C. v. M.J.B., 748 A.2d 539, 554 (N.J. 2000).

¹⁰⁰ FLA. STAT. § 61.13(3) (2010).

¹⁰¹ See 42 U.S.C. § 402(d)(1) (2011).

¹⁰² 42 U.S.C. § 416(e) (2011).

¹⁰³ 77 PA. CONS. STAT. ANN. § 1407 (West 2011).

For purposes of this statute, the term “children” includes stepchildren. Thus, while legislatures found it appropriate to provide for stepchildren who reside with the decedent when the decedent’s death results from an occupational disease, a logical extension of the law would also provide for stepchildren who reside with decedent when the decedent dies intestate.¹⁰⁴ Since the federal legislature and some state legislatures have developed tests for stepchildren inheritance in specific areas of the law, there should be no issue in incorporating the factors test to provide for stepfamilies in dealing with intestacy.

D. Long-Term Positive Effects of the Statute

Statutory provisions such as the factors test, which provide for blended American families through intestacy statutes, create long-term positive effects by increasing the accuracy of intent effectuation in intestacy statutes and by providing support for a greater number of members within a blended family. Including a statutory provision that specifically addresses stepparents and stepchildren allows the factors test to address the reality that more than half of all Americans have lived or currently live in blended family situations.¹⁰⁵ This would result in more accurate intestacy distribution by providing for a situation that, while not new—as stepfamilies have existed for decades—, remains sparsely and inadequately addressed by the UPC and states. In allowing the possibility of inheritance from a stepparent or stepchild, the factors test better meets the two primary goals of intestacy provisions: to carry out the intent effectuation of the decedent¹⁰⁶ and to assist the state by supporting the decedent’s family.¹⁰⁷ The factors test would better satisfy the intent of the decedent by allowing deserving stepchildren to inherit from their stepparent and vice versa, an option which is not available to stepparents unless the stepchild is legally adopted by the stepparent. Families will receive greater financial support because the stepchild or stepparent will be able to better provide for the family, by keeping the inheritance within the immediate family, rather than allowing inheritance to fall to more distant relatives.

E. Potential Criticisms of the Factors Test

Courts’ hesitancy to adjudicate inheritance rights in blended family situations stems from the large variance in the strength of stepparent-stepchild relationships and from the burden on judicial resources. However, with “the large majority of people d[ying] intestate,” and more than half the population constituting a member

¹⁰⁴ Noble, *supra* note 15, at 848-49.

¹⁰⁵ *Trends in Marriage and Divorce*, CENTERS FOR DISEASE CONTROL AND PREVENTION (July 24, 2002), http://www.cdc.gov/nchs/pressroom/02news/div_mar_cohab.htm; *Divorce Rate – USA*, ABOUTDIVORCE.ORG, http://www.aboutdivorce.org/us_divorce_rates.html (last visited Oct. 14, 2009).

¹⁰⁶ Gary, *supra* note 16, at 651.

¹⁰⁷ *Id.* at 652.

of a blended family, the issue of stepchild and stepparent inheritance can no longer be overlooked.¹⁰⁸

1. Variance in Strength of Stepparent-Stepchild Relationships

Critics correctly shy from granting broad inheritance rights to blended family members when one considers that 1) sixty to seventy-four percent of remarriages end in divorce, and 2) time is needed for stepfamilies to develop family closeness.¹⁰⁹ However, the factors test alleviates these concerns by withholding broad rights and instead allowing inheritance based on the individual relationship. While not all remarriages are life lasting, some of the bonds created between stepparents and stepchildren in a remarriage do indeed last a lifetime. The factors test takes into consideration the amount of time and frequency of visits between the stepparent and stepchild. Moreover, the factors test does not grant broad inheritance rights but rather looks to the variance in the strength of the stepparent-stepchild relationship that critics are concerned with and discerns whether a decedent would intend for the stepfamily member to inherit through intestacy. By looking at the totality of the circumstances of the stepparent-stepchild relationship, the factors test helps determine whether the strength of the relationship reached the level of a parent-child relationship.

2. Stepparents Could Create a Will to Include the Stepchild

Although creating a will seems like a viable option to ensure that a stepchild inherits, the reality is that the majority of Americans die intestate.¹¹⁰ There are a variety of reasons that individuals fail to write wills, including being intimidated by the legal system, feeling uncomfortable with the idea of acknowledging one's own death, or assuming that the state will follow one's wishes in the distribution of his or her property.¹¹¹ Additionally, many people believe that their families will distribute their assets in the way they would have wanted, so the decedent does not formally execute a will.¹¹² As discussed above, a stepparent could be reluctant to create a will for fear of causing problems with the stepchild's natural parent or their own children. Moreover, many wills, once created, are found to be invalid, which

¹⁰⁸ JESSE DUKEMINIER & STANLEY M. JOHANSON, *WILLS, TRUSTS, AND ESTATES* 71-72 (6th ed. 2000).

¹⁰⁹ *Divorce Rate*, *supra* note 105; E.M. Hetherington, *The Role of Individual Differences and Family Relationships in Children's Coping with Divorce & Remarriage*, *FAMILY TRANSITIONS* 165-94 (P. Cowan & E. M. Hetherington eds., 1991).

¹¹⁰ Michelle Croteau, *Most Americans Don't Have a Will*, *FINDLAW* (Dec. 1, 2010), <http://company.findlaw.com/pr/2010/120110.wills.html>.

¹¹¹ Adam J. Hirsch, *Default Rules in Inheritance Law: A Problem in Search of its Context*, 73 *FORDHAM L. REV.* 1031, 1048 (2004); Gary, *supra* note 51.

¹¹² See Gregory S. Alexander & Mary Louise Fellows, *Forty Years of Codification of Estates and Trusts Law: Lessons for the Next Generation*, 40 *GA. L. REV.* 1049 (2006) (discussing the changing requirements of executing a valid will).

would put the estate at the mercy of the intestacy system.¹¹³ Therefore, the factors test is still a necessary element of the society, as fifty-five percent of Americans do not draft a will prior to their death.¹¹⁴

3. More Opportunities for Stepchildren to Inherit

One may argue that allowing stepchild intestate inheritance unfairly favors stepchildren by allowing them more opportunities to inherit than either biological children without stepparents or adopted children. Adoption of a child severs the ties to his natural parents, according adoptees the same inheritance rights that biological children possess.¹¹⁵ However, adopted children do not sever all ties with their biological parents after adoption in situations involving post-adoption contact.¹¹⁶ Thus, some adoptive children have the opportunity to inherit from more than just their two biological parents. Often in the stepfamily context, a child is in the position to inherit from a stepparent because a biological parent was absent throughout the child's life. In these cases, it is unlikely that the child would inherit from three parental figures, which alleviates the discrepancies between the number of potential benefactors for the child. Finally, the purpose of an intestacy statute is to focus on the decedent's intent rather than on equality among the number of potential benefactors. Stepfamilies in which a child maintains emotional ties to the noncustodial parent or to the noncustodial parent's family acknowledge a familial connection and should be provided the opportunity for inheritance from the noncustodial relative and stepparent if a relationship exists that would establish that intent.¹¹⁷

The argument that a stepchild has more opportunities to inherit than a person with only two biological parents and, therefore, should be forbidden from inheriting through a stepparent is unreasonable. Every person has different opportunities for inheritance that result from his or her family. Even if one set aside the obvious discrepancies in wealth that allow for some to inherit versus others, each family dynamic creates its own circumstances to inherit. A person with two biological parents may be an only child, and thus not have the "opportunity" to inherit from a sibling when compared to another. To use fairness in terms of opportunities for inheritance as an argument ignores the obvious fact that no two people are alike for inheritance purposes.

¹¹³ *Id.*

¹¹⁴ Croteau, *supra* note 110.

¹¹⁵ Cahn, *supra* note 4, at 65.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

4. Factors Test Statute Creates a Judicial Burden on the Court Systems

It could be argued that including a provision that requires the evaluation of a relationship between a stepparent and stepchild would create a judicial burden on the court system. However, the UPC already evaluates parent-child relationships in section 2-114, which precludes inheritance from or through a child if a parent under the statute has not treated the child as a child or has refused to support the child.¹¹⁸ Thus, the UPC has already opened itself to judicial scrutiny in terms of a parent-child relationship. Similarly, several state statutes and the federal Social Security Act evaluate the relationship or relationship factors between parents, stepparents and children to discern appropriate courses of action for distribution following a stepparent's death. Consequently, to expand intestacy to include inheritance by stepchildren and stepparents would promulgate the primary purposes of intestacy, intent effectuation and family care, while not generating any greater judicial responsibility than that which already exists through the relationship tests currently in effect. Furthermore, the United States Supreme Court has repeatedly acknowledged that states have a legitimate interest in developing statutory classifications that promote an "accurate and efficient method of disposing of property at death" despite additional judicial responsibility.¹¹⁹

CONCLUSION

In conclusion, the UPC and state statutes are inadequate to deal with the realities of the modern blended family; thus, the UPC and state statutes should include a factors test that would determine whether a parent-child relationship existed between a stepparent and stepchild, making it possible for them to inherit from one another through intestacy. By determining whether a parent-child relationship exists and allowing blended family members to inherit from one another, the primary purposes of intestacy—intent effectuation and support of the family that alleviates the burden on the state—would be better met. Finally, the federal government and state legislation already include a stepchild as a child for inheritance purposes and apply relationship tests in specific contexts. Consequently, the inclusion of a factors test for inheritance purposes regarding stepparents and stepchildren naturally extends a body of law the court system and legislatures already embrace.

¹¹⁸ UNIF. PROBATE CODE § 2-114 (2011).

¹¹⁹ *Trimble v. Gordon*, 430 U.S. 762, 766 (1977); *Lalli v. Lalli*, 439 U.S. 259, 265 (1978).