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# Steed v. Imperial Airlines

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## Steed v. Imperial Airlines

On October 31, 1973, the Supreme Court of California, sitting in bank, handed down the opinion of the case of *Steed v. Imperial Airlines*.[1] The holding of the court in that case was: "[T]hat the word 'heirs' as used in California Code of Civil Procedure section 377 includes within its meaning a dependent stepchild such as Elizabeth under the circumstances of this case."[2] It is with this holding and the difference between the analysis of the majority and the dissent, that this casenote deals.

California Code of Civil Procedure section 377 is the California code section which provides for an action for wrongful death by certain designated classes.[3] Under this section, the wrongful death action may be brought by the decedent's heirs, personal representatives, or dependent parents. It was pursuant to this code section that the action in the case under discussion was brought.

The action was brought by Martha Steed as guardian ad litem for her daughter Elizabeth against Imperial Airlines, Volpar, Inc., Visco Flying Co., and Garrett Air Research for the wrongful death of Elizabeth's stepfather, Ronald Steed. Defendant Garrett's motion for summary judgment was granted by the trial court on the ground that Elizabeth was not an "heir" of her stepfather and thus had no right of action under California Code of Civil Procedure section 377. Plaintiff appealed from the decision of the trial court.

On April 8, 1959, Elizabeth was born to Martha out of wedlock. On April 25, 1962, Martha married Ronald Steed who was not the natural father of Elizabeth. Prior to the marriage, Ronald orally agreed to assume the full obligation of father and parent to Elizabeth. From the date of his marriage to Martha, Ronald held out Elizabeth to all the world as his daughter. This holding out continued until the date of his death which was January 8, 1968. The holding out by Ronald consisted of his accepting her into his home,

* *Ed. note*: The California Supreme Court, on rehearing, reversed the holding here, Steed v. Imperial Airlines — Cal. 3d —, 524 P.2d 801, 115 Cal. Rptr. 329 (July 25, 1974)).

1. Steed v. Imperial Airlines, 10 Cal. 3d 323, 515 P.2d 17, 110 Cal. Rptr. 217 (1973).

2. *Id.* at 330, 515 P.2d at 22, 110 Cal. Rptr. at 222.

3. CAL. CODE OF CIV. PROC. § 377 (West 1973).

acquiescing in and encouraging the use of his surname by her, providing her with full support, and at all times representing to her that he was in fact her father. These representations led Elizabeth into believing that Ronald was in fact her father. Ronald claimed Elizabeth as a dependent on his tax returns and made no demands on her natural father for contributions to her support. However, Ronald never formally adopted Elizabeth. Ronald's natural daughter recovered $75,000 for his death.

The issue before the court in this case, as framed by Mr. Justice Burke, was: "[W]hether a stepchild, treated in all respects as the natural child of her deceased stepfather, may maintain an action for the wrongful death of the step-parent under Code of Civil Procedure section 377 which limits the right of action to 'heirs' or 'personal representatives.' "[4]

It was the conclusion of the court that under the stipulated facts, California Code of Civil Procedure section 377 must be interpreted as allowing the action, in order to comply with the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.[5]

The reasoning of the majority, speaking through Mr. Justice Burke, began with an interpretation of the word "heirs" as used in the code section. The court cited the case of *Kunakoff v. Woods*[6] for the proposition that, the use of the word "heirs" in section 377 has been interpreted as limiting the class of persons to those who would have inherited the decedent's estate had he died intestate.[7] There is no provision for inheritance by dependent stepchildren in the California statutes of succession.[8] Therefore, under the interpretation advanced by the court, Elizabeth would be unable to maintain an action for the wrongful death of her stepfather.

In order the resolve the dilemma with which the court was faced due to the past statutory construction, Mr. Justice Burke turned to the principles of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The analysis began by setting forth two rules of equal protection. The first rule discussed by the analysis was that, distinctions drawn by a statute

4. Steed v. Imperial Airlines, 10 Cal. 3d 323, 325, 515 P.2d 17, 18, 110 Cal. Rptr. 217, 218 (1973).

5. *Id.* at 325, 515 P.2d at 18, 110 Cal. Rptr. at 218.

6. Kunakoff v. Woods, 166 Cal. App. 2d 59, 62, 332 P.2d 773, 775 (1958).

7. Steed v. Imperial Airlines, 10 Cal. 3d 323, 326, 515 P.2d 17, 19, 110 Cal. Rptr. 217, 219 (1973).

8. *Id.* at 326, 515 P.2d at 19, 110 Cal. Rptr. at 219.

granting an economic benefit to one class while denying it to another class, must bear at least some rational relationship to a conceivable state purpose.[9] In addition, the analysis discussed the rule that, a statute which is valid on its face may have a discriminatory effect in its application thereby denying equal protection of the law.[10] The majority opinion concluded that the statute met the demands of the Equal Protection Clause on its face, and then went on to test the constitutionality of the section in its application.[11]

The majority concluded that the code section violated the Equal Protection Clause in its application to the facts of this case. The fact that the code section would have the effect of excluding the recovery of Elizabeth while allowing the recovery of the natural child, led the court to hold that: "We can find no rational basis for such a distinction which is based solely upon the technical definition of the word 'heirs.' "[12] The reasoning of the court turned upon the absence of distinguishable differences between collection by Elizabeth and by her stepsister. Both children had relied upon the deceased in the same way and for the same reasons. The fact that the deceased had failed to formally adopt Elizabeth as being the only obstacle to her recovery seemed repugnant to the court.

The court continued in its opinion by analogizing the facts before it to the facts of two United States Supreme Court cases dealing with the rights of illegitimate children as compared to those of legitimate children. In *Levy v. Louisiana*[13] the United States Supreme Court held invalid under the Equal Protection Clause a Louisiana statute which barred an action by illegitimate children for the wrongful death of their mother. The majority of the court quoted the following from the *Levy* decision:

> These children, though illegitimate, were dependent on her; she cared for them and nurtured them; they were indeed hers in the biological and spiritual sense; *in her death they suffered wrong in the sense that any dependent would.*[14] [Italics added by the court].

9. *Id.*
10. *Id.* at 327, 515 P.2d at 20, 110 Cal. Rptr. at 220.
11. *Id.*
12. *Id.*
13. Levy v. Louisiana, 391 U.S. 68 (1968).
14. Steed v. Imperial Airlines, 10 Cal. 3d 323, 327, 515 P.2d 17, 20, 110 Cal. Rptr. 217, 220 (1973).

The opinion then goes on to quote from the case of *Weber v. Aetna Casualty and Surety Co.*[15]

> An unacknowledged illegitimate child may suffer as much from the loss of a parent as a child born within wedlock or an illegitimate later acknowledged . . . *The legitimate children and the illegitimate child all lived in the home of the deceased and were equally dependent upon him for maintenance and support.*[16] [Italics added by the court].

After discussing the opinions of the two cases, the court turned to a case decided by the California Court of Appeal. In *Arizmendi v. System Leasing Corp.*[17] the Court of Appeal held that, a distinction under the California statutes, which prevent an unacknowledged illegitimate child from bringing an action under California Code of Civil Procedure section 377 for the wrongful death of his father, constituted a denial of equal protection.[18] The court then went on to quote further from the opinion where the Court of Appeal said that, the deprivation of the right of support by the tortious act of a third person resulting in the death of the natural father is just as real and as devastating to an illegitimate minor child as it is to a legitimate minor child.[19]

The court proceeded from their discussion of the cases above to compare the status of Elizabeth to that of the children in the cases cited. The court considered the relationship between Elizabeth and Ronald, and concluded that although Elizabeth was not the natural child of the decedent, she was as dependent upon him for support as were the children in *Levy*, *Weber*, and *Arizmendi*.[20] The court then went on to say that: "[T]he relationship between Elizabeth and the decedent was such that the decedent would have been estopped, had he lived, from denying a continuing obligation to support her."[21]

Relying on the language and discussion of the cases cited above, and upon the estoppel decision, citing *Clevenger v. Clevenger*[22] the court concluded that the support of Elizabeth by the decedent rendered the injury she suffered identical with that suffered by her

15. Weber v. Aetna Casualty and Surety Co., 406 U.S. 164 (1972).
16. Steed v. Imperial Airlines, 10 Cal. 3d 323, 328, 515 P.2d 17, 21, 110 Cal. Rptr. 217, 221 (1973).
17. Arizmendi v. System Leasing Corp., 15 Cal. App. 3d 720, 93 Cal. Rptr. 411 (1971).
18. Steed v. Imperial Airlines, 10 Cal. 3d 323, 328, 515 P.2d 17, 21, 110 Cal. Rptr. 217, 221 (1973).
19. *Id.* at 328, 515 P.2d at 21, 110 Cal. Rptr. at 221.
20. *Id.*
21. *Id.*
22. Clevenger v. Clevenger, 189 Cal. App. 2d 658, 11 Cal. Rptr. 707 (1961).

step-sister, who was allowed to recover under the code section.[23] With this idea of identical loss of support due to the death of the decedent, the court reasoned that there was no rational reason for drawing a distinction between dependent stepchildren in Elizabeth's position and other dependent children, at least for the purpose of maintaining a wrongful death action. "As in *Levy, Weber,* and *Arizmendi, supra,* to deny the child's right to recover for her loss would be an impermissible discrimination under the equal protection clause."[24]

The court concluded by reversing and remanding the case to the trial court with orders to deny the motion for summary judgment. The express holding of the court which resulted in this determination expanded the interpretation of the word "heirs" as used in the code section. The majority held that the word "heirs" as used in California Code of Civil Procedure section 377 includes within its meaning a dependent stepchild such as Elizabeth under the circumstances of this case.[25]

It would appear that the court was limiting its holding to facts identical with this case. When this holding was challenged by Mr. Chief Justice Wright, in his dissenting opinion, as, replacing the class of persons limited to "heirs" with a class limited to those who are injured by reason of the death of the decedent, thus markedly altering the legislative limitation,[26] the majority answered by way of a footnote to its opinion wherein it was said that:

> We conclude merely that where two half sisters suffer an identical injury because of their relationship to the deceased, there is no rational distinction that could be drawn allowing recovery by one but not by the other. Thus, to deny recovery to Elizabeth, but not to her half sister, solely upon a technical, albeit correct, legal definition of the word 'heirs' contravenes the mandate of the Equal Protection Clause.[27]

Mr. Chief Justice Wright went on in his dissenting opinion to state his interpretation of the majority opinion, as a case of distillation from Code of Civil Procedure section 377 a legislative purpose

23. Steed v. Imperial Airlines, 10 Cal. 3d 323, 330, 515 P.2d 17, 22, 110 Cal. Rptr. 217, 222 (1973).
24. *Id.*
25. *Id.*
26. *Id.* at 331, 515 P.2d at 23, 110 Cal. Rptr. at 223.
27. *Id.*

to compensate those in a position of dependency for the injury or pecuniary losses they would suffer by reason of the death of the individual who had furnished support.[28] The dissenting justice seemed to be of the belief that, the legislature had foreclosed the need for the court to construct the language of the code section by the use of clear language in defining the scope of the code section.

> The word 'heirs' does not require construction but, apparently recognizing that it does not, the majority seek to substitute for such legislatively declared class of persons an indefinite and, depending upon the circumstances of each case, a varying class consisting of persons, who, because of some dependency status are injured by decedent's death.[29]

The majority answered the dissent, again by footnote, and stressed the equal protection principle upon which the opinion was based. The majority felt that the dissent had assumed that since the classification was intended by the legislature, that it was therefore proper. This, said the court, wholly disregards the contemporary function of the Equal Protection Clause as a limitation upon the types of permissible legislative classifications.[30]

The recent trend of the courts around the country in cases involving the rights of illegitimates under the Equal Protection Clause has been to bring some sort of uniformity into the law by doing away with classifications which are held over from the common law.[31] Just as the courts have concluded that there is no rational state interest furthered by the classification of illegitimates as second class citizens when compared to legitimate children,[32] it is now time for the same reasoning to apply to non-adopted step-children, when compared to the natural children of a step-parent.

The majority opinion in this case, when viewed along with the current trend of the law, is a step in the right direction. Using the principles of the Equal Protection Clause, the Supreme Court of California, has by this opinion, opened the door for eventual determination that, any person who suffers loss of support by reason of the wrongful death of another, should be able to recover for their loss under the state's wrongful death statute. The trend in this direction is evidenced not only by this case, but by the act of the California legislature in amending section 377 in 1968

28. *Id.* at 333, 515 P.2d 24, 110 Cal. Rptr. at 224.
29. *Id.*
30. *Id.* at 331, 515 P.2d at 23, 110 Cal. Rptr. at 223.
31. 1 PEPPERDINE L. REV. 266 (1974).
32. Gomez v. Perez, 409 U.S. 535 (1973).

to include within that class of persons who may bring an action for the wrongful death of another, dependent parents of the decedent.[33]

The ramification of the majority's opinion has yet to be felt. The limitation to the facts of the case before the court may result in a case by case determination until such time as the court abandons all restrictions as to who may bring an action under California Code of Civil Procedure section 377.

In its final determination, the court looked to the case of *Clevenger v. Clevenger*.[34] In that case, the court held that under a limited set of circumstances a child's step-father would not be allowed to assert that he was not the child's father to avoid paying child support. The step-father was estopped to deny that he was the child's father.[35] The facts in the case gave rise to the action by the child to collect support from his step-father. It would appear that the support idea weighed heavily on the court's determination in *Clevenger*, just as it did in the case under discussion.

The United States Supreme Court has looked to the support element in its decisions concerning illegitimates.[36] The California Supreme Court in the case under discussion and in other cited cases herein, has also relied on the element of support in reaching their decisions.[37] The apparent trend of both of these high courts is to extend the right to maintain an action for wrongful death to all persons who have suffered a loss of support by the death of the decedent. Perhaps, one day, using the principles of the Fourteenth Amendment Equal Protection Clause, the courts will extend this right to corporations and other entities considered "persons" under the Fourteenth Amendment.

The way is now open for the California Supreme Court to expand the interpretation of the word "heirs" in section 377, to all persons who have suffered loss by reason of the wrongful death of the

33. CAL. CODE OF CIV. PROC. § 377 (West Supp. 1974).
34. Clevenger v. Clevenger, 189 Cal. App. 2d 658, 11 Cal. Rptr. 707 (1961).
35. *Id.* at 671, 11 Cal. Rptr. at 714.
36. Gomez v. Perez, 409 U.S. 535 (1973).
37. Arizmendi v. Systems Leasing Corp., 15 Cal. App. 3d 730, 93 Cal. Rptr. 411 (1971); Clevenger v. Clevenger, 189 Cal. App. 2d 658, 11 Cal. Rptr. 707 (1961).

decedent. The restriction based on limiting recovery to relatives of the decedent has been explained as necessary to eliminate difficult proof problems which might arise.[38] Certainly, this parade of the horribles argument should have no effect when faced with important rights and the loss of support by reason of the wrongful death of the decedent. The right to support, regardless of blood relation to the decedent, has been shown to outweigh all proof problems, by leaving the final determination of loss up to the court, as was done in the case under discussion.

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38. Steed v. Imperial Airlines, 10 Cal. 3d 323, 327, 515 P.2d 17, 20, 110 Cal. Rptr. 217, 220 (1973).