

Ada STEWART, Administratrix of the
Estate of Wesley SHAW, Sr., and
Dixie Mae SHAW *v.* Dessie K. SMITH,
Administratrix of the Estate of Carolyn
SHAW, Deceased, and Wesley SHAW, Jr.

80-91

601 S.W. 2d 837

Supreme Court of Arkansas
Opinion delivered June 23, 1980

DESCENT & DISTRIBUTION — RIGHT OF ILLEGITIMATE CHILDREN TO INHERIT FROM THEIR FATHERS. — The opinion of the Court of Appeals reversing the chancellor's decision in the instant case,

delivered March 5, 1980, is affirmed, with the amplification of its opinion to point out that litigation was pending as to the rights of petitioners to inherit as illegitimate descendants of the decedent at the time of the decision in *Trimble v. Gordon*, 430 U.S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 31, on April 26, 1977, which held unconstitutional a state statute prohibiting illegitimate children from inheriting from their fathers.

On certiorari to the Court of Appeals on its reversal of the Pulaski Probate Court, First Division, *Murray O. Reed*, Judge; affirmed.

Charles A. Brown, for petitioners.

Jewell Brown, P.A., for respondents.

PER CURIAM

We granted certiorari in this case since it involves the interpretation of Ark. Stat. Ann. § 50-411 (Repl. 1971) and Ark. Stat. Ann. § 61-141 (d) (Supp. 1979).

In affirming the Court of Appeals, we only amplify its opinion on the issue of illegitimacy, § 61-141 (d). The verified petition for appointment of a personal representative for the estate of the decedent, Wesley Shaw, Sr., signed by petitioner Shaw, was filed by him on December 1, 1975. He listed himself as an heir with the relationship of "son". He also listed as grandchildren the two infant children of petitioner Smith's decedent. As indicated in the Court of Appeals' opinion, the respondent, Ada Stewart, filed an objection to this proceeding on December 24, 1975, raising the question of their illegitimacy. That objection specifically asserted that as a "natural sister" of the decedent, she might have an interest as an intestate heir and that any claim by petitioner Smith's decedent and petitioner Shaw "derives solely from their status as alleged illegitimate children and or descendants of such illegitimate children of the decedent." Further, the personal representative, appointed at the request of petitioner Shaw, "is the nominee of persons whose interest in this litigation is adverse to petitioner both in theory and in fact."

In the circumstances, we hold as of April 26, 1977 (the

date of the decision in *Trimble v. Gordon*, 430 U.S. 762, 97 S. Ct. 1459, 52 L. Ed. 2d 31 [1977]), litigation was pending as to the right of petitioners to inherit as illegitimate descendants of the decedent. *Lucas v. Hancock*, 266 Ark. 142, 583 S.W. 2d 491 (1979). See also *Compton, Adm'x v. White, Guardian*, 266 Ark. 648, 587 S.W. 2d 829 (1979). With this additional observation, the opinion of the Court of Appeals is affirmed in its entirety.

Affirmed.
