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And assuming that Kohmetsher and Bartusek reapply for their positions during these new competitive examinations, should the county consider these individuals' qualifications based upon their original date of hire or can it consider the additional years of experience each presumably has gained?

It may be that the new examinations ordered by this court provide a proper resolution to this case. But the remedy as ordered could result in penalizing innocent employees, and it is not dictated by law. As such, I would leave it to the district court to craft an appropriate remedy upon a consideration of all the facts and circumstances.

STEPHAN, J., joins in this concurrence and dissent.

MELISSA AMEN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, K.L.A., PLAINTIFF, V. MICHAEL J. ASTRUE, COMMISSIONER OF THE SOCIAL SECURITY ADMINISTRATION, DEFENDANT.

822 N.W.2d 419

Filed November 16, 2012. No. S-11-1094.

1. **Statutes: Appeal and Error.** The rules of statutory interpretation require an appellate court to give effect to the entire language of a statute, and to reconcile different provisions of the statutes so they are consistent, harmonious, and sensible.
2. ____: ____. Statutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.
3. ____: ____. In construing statutory language, an appellate court attempts to give effect to all parts of a statute and avoid rejecting as superfluous or meaningless any word, clause, or sentence.
4. **Statutes.** It is not within the province of a court to read a meaning into a statute that is not warranted by the legislative language.
5. **Decedents' Estates.** In order for a lineal descendant to inherit from an intestate estate, a descendant must survive the decedent.
6. **Decedents' Estates: Minors.** A child, conceived after his or her biological father's death through intrauterine insemination using his sperm and born within 9 months of his death cannot inherit from his or her father as his surviving issue under current Nebraska intestacy law.
7. **Courts: Legislature: Public Policy.** A court cannot contradict the Legislature on matters of public policy.

8. **Constitutional Law: Legislature: Public Policy.** The Nebraska Constitution obliges the Nebraska Supreme Court to leave reformation of this state's public policy to the Legislature.
9. **Courts: Questions of Law.** Neb. Rev. Stat. § 24-219 (Reissue 2008), which grants the Nebraska Supreme Court the authority to answer certified questions, limits those answers to questions of law which are certified.

Certified Question from the U.S. District Court for the District of Nebraska. Judgment entered.

Maureen McBrien, of Brick & Sugarman, L.L.P., and Susan K. Sapp, of Cline, Williams, Wright, Johnson & Oldfather, L.L.P., for plaintiff.

Karen P. Seifert, of U.S. Department of Justice, Civil Division, Federal Programs Branch, for defendant.

HEAVICAN, C.J., CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ., and RIEDMANN, Judge.

MCCORMACK, J.

NATURE OF CASE

Pursuant to Neb. Rev. Stat. § 24-219 et seq. (Reissue 2008), the U.S. District Court for the District of Nebraska certified the following question to this court: "Can a child, conceived after her biological father's death through intrauterine insemination using his sperm, and born within nine months of his death, inherit from him as his surviving issue under Nebraska intestacy law?"

BACKGROUND

In accordance with § 24-221, the following facts were provided by the U.S. District Court in its certification request: Joshua Amen and Melissa Amen married on June 5, 2004. Prior to their wedding, Joshua was diagnosed with cancer. Before beginning cancer treatment, Joshua cryogenically preserved his sperm at a sperm bank. In October 2006, during Joshua's ongoing cancer treatment, Melissa underwent a fertility treatment cycle with Joshua's consent and support. Joshua passed away on November 24, 2006, while domiciled in Nebraska.

Seven days after Joshua's death, Melissa underwent intrauterine insemination using Joshua's cryopreserved sperm.

The procedure was successful, and Melissa gave birth to a child, K.L.A., in August 2007. Joshua is K.L.A.'s biological father.

On August 31, 2007, Melissa applied to the Social Security Administration (SSA) for mother's insurance benefits and surviving child's insurance benefits, on behalf of K.L.A., based on Joshua's earnings record. SSA denied the application initially and upon reconsideration.

After the initial determination, Melissa filed a request for rehearing on April 13, 2009. On February 26, 2010, an administrative law judge (ALJ) decided that K.L.A. was entitled to child's insurance benefits on Joshua's Social Security record.

SSA's Appeals Council chose to review the ALJ's hearing decision upon its own motion, pursuant to 20 C.F.R. § 404.969 (2010). The Appeals Council reversed the ALJ's decision. The council found that because K.L.A. does not have inheritance rights in the wage earner's estate under the laws of the State of Nebraska, she is not a "child" of the wage earner, Joshua, under the Social Security Act, 42 U.S.C. § 416(h)(2)(A) and (B) or (3)(C) (2006),[1] and therefore is not entitled to child's insurance benefits.

On November 8, 2010, Melissa filed an appeal of the final decision of the Commissioner of Social Security pursuant to 42 U.S.C. § 405(g) (2006) in the U.S. District Court.

ANALYSIS

Our Answer to Certified Question

We are asked to determine whether, under Nebraska intestacy law, a child conceived after her biological father's death through intrauterine insemination can inherit from her father's intestate estate. To begin, Neb. Rev. Stat. § 30-2301 (Reissue 2008) states: "Any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed in the following sections of this code."

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[1] See *Astrue v. Capato ex rel. B.N.C.*, ___ U.S. ___, 132 S. Ct. 2021, 182 L. Ed. 2d 887 (2012).

Neb. Rev. Stat. § 30-2303 (Reissue 2008) provides in relevant part:

> The part of the intestate estate not passing to the surviving spouse under section 30-2302, or the entire intestate estate if there is no surviving spouse, passes as follows:
>
> (1) to the issue of the decedent . . . .
>
> (2) if there is no surviving issue, to his parent or parents equally.

Under Neb. Rev. Stat. § 30-2209(23) (Reissue 2008), "[i]ssue" is statutorily defined as "all his or her lineal descendants of all generations."

Neb. Rev. Stat. § 30-2304 (Reissue 2008) states in part: "Any person who fails to survive the decedent by one hundred twenty hours is deemed to have predeceased the decedent for purposes of homestead allowance, exempt property and intestate succession, and the decedent's heirs are determined accordingly." Lastly, Neb. Rev. Stat. § 30-2308 (Reissue 2008), the afterborn heirs statute, states: "Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent." The remaining intestacy statutes are irrelevant to our answer.

[1-4] The rules of statutory interpretation require an appellate court to give effect to the entire language of a statute, and to reconcile different provisions of the statutes so they are consistent, harmonious, and sensible.[2] Statutory language is to be given its plain and ordinary meaning, and this court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.[3] The court attempts to give effect to all parts of a statute and avoid rejecting as superfluous or meaningless any word, clause, or sentence.[4] It is not within the province of this court to read

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[2] *Republic Bank v. Lincoln Cty. Bd. of Equal.*, 283 Neb. 721, 811 N.W.2d 682 (2012).

[3] *Woodhouse Ford v. Laflan*, 268 Neb. 722, 687 N.W.2d 672 (2004).

[4] *Butler Cty. Sch. Dist. v. Freeholder Petitioners*, 283 Neb. 903, 814 N.W.2d 724 (2012).

a meaning into a statute that is not warranted by the legislative language.[5]

[5] With our fundamental rules of statutory interpretation as guidance, we begin our analysis by examining § 30-2303. It establishes that the issue of the decedent, including lineal descendants, can inherit from a decedent's intestate estate.[6] K.L.A. is a lineal descendant of Joshua. However, Nebraska intestacy law includes an important limitation. Section 30-2303(2) states that "if there is no surviving issue," then the intestate estate passes to the decedent's parents. This plainly means that in order for the lineal descendant to inherit from the intestate estate, a descendant must survive the decedent.

This plain meaning is reaffirmed statutorily by § 30-2304, which requires any heir to survive the decedent by "one hundred twenty hours." Nebraska statutes have not defined "survive." But, the afterborn heirs statute was clearly intended as an exception to the survival requirement.[7] Section 30-2308 allows an heir, who is not *born* at the time of the decedent's death, to inherit "as if [he or she] had been *born* in the lifetime of the decedent." (Emphasis supplied.) Thus, the Legislature conveys that being born in the lifetime of the decedent is otherwise a requirement for the child to be considered "surviving issue."

[6] Section 30-2308 contains a plain, direct, and unambiguous limiting clause to the afterborn heirs exception. The heir must be conceived before the father's death. Therefore, our answer to the certified question is no. A child, conceived after her biological father's death through intrauterine insemination using his sperm and born within 9 months of his death cannot inherit from her father as his surviving issue under current Nebraska intestacy law. A child conceived after her biological father's death does not "survive" her father as required under § 30-2304. Further, such a child is unambiguously excluded from inheriting under § 30-2308 because she was not

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[5] *Metropolitan Comm. College Area v. City of Omaha*, 277 Neb. 782, 765 N.W.2d 440 (2009).

[6] § 30-2303(1).

[7] See § 30-2308.

conceived prior to her father's death. Our answer is consistent with at least four other courts that have interpreted the same, or similar, afterborn heirs statutes to exclude posthumously conceived children.[8]

[7,8] Although the result is unfortunate for K.L.A., we are bound to the ordinary meaning of the relevant statutes. The plain, direct, and unambiguous language of the survival requirement under § 30-2304 and the afterborn heirs exception under § 30-2308 represent Nebraska's public policy on this issue. We have previously stated that this court cannot contradict the Legislature on matters of public policy.[9] Therefore, we will not resort to statutory interpretation when the ordinary meaning of the statute is plain and obvious.[10] Unlike the New Jersey trial court decision[11] cited in Melissa's brief, we cannot ignore the statute's literal meaning to create a favorable result for K.L.A.[12] The Nebraska Constitution obliges this court to leave reformation of this state's public policy to the Legislature.[13]

Therefore, the plain and ordinary meaning of §§ 30-2304 and 30-2308 is that under current Nebraska law, a child conceived after her biological father's death cannot inherit from her father as surviving issue for purposes of intestacy.

Melissa's Constitutional Challenge

In Melissa's brief, she argues that if we apply Nebraska intestacy laws to deny posthumously conceived children rights in an intestator's estate, the statute as applied would violate the

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[8] See, e.g., *Vernoff v. Astrue*, 568 F.3d 1102 (9th Cir. 2009); *Beeler v. Astrue*, 651 F.3d 954 (8th Cir. 2011), *cert. denied* ___ U.S. ___, 132 S. Ct. 2679, 183 L. Ed. 2d 62 (2012); *Stephen v. Commissioner of Social Sec.*, 386 F. Supp. 2d 1257 (M.D. Fla. 2005); *Finley v. Astrue*, 372 Ark. 103, 270 S.W.3d 849 (2008).

[9] *Murray v. UNMC Physicians*, 282 Neb. 260, 806 N.W.2d 118 (2011).

[10] *Woodhouse Ford v. Laflan, supra* note 3.

[11] *In re Estate of Kolacy*, 332 N.J. Super. 593, 753 A.2d 1257 (2000).

[12] See *Metropolitan Comm. College Area v. City of Omaha, supra* note 5.

[13] See, *Alsidez v. American Family Mut. Ins. Co.*, 282 Neb. 890, 807 N.W.2d 184 (2011); *Nebraska P.P. Dist. v. City of York*, 212 Neb. 747, 326 N.W.2d 22 (1982).

Equal Protection Clause of the Nebraska Constitution. Without addressing the merits of Melissa's equal protection challenge, we find the constitutional question is not properly before this court.

[9] As we did in *Givens v. Anchor Packing*,[14] we refuse to address the merits of the constitutional challenge raised by Melissa. Section 24-219, which grants this court the authority to answer certified questions, limits our answers to questions of law which are certified.[15] There was no constitutional question within the question certified to us by the U.S. District Court. For this reason, we will not substantively address Melissa's constitutional challenge.

CONCLUSION

The answer to the certified question is no, a child conceived after her biological father's death through intrauterine insemination using the father's sperm and born within 9 months of his death cannot inherit from the father as his surviving issue under Nebraska intestacy law. Further, Melissa's constitutional challenge is not properly before this court and therefore cannot be substantively answered.

JUDGMENT ENTERED.

WRIGHT, J., not participating.

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[14] *Givens v. Anchor Packing*, 237 Neb. 565, 466 N.W.2d 771 (1991).

[15] See *id*.

STATE OF NEBRASKA, APPELLEE, V.
AREVALO RAMIREZ, APPELLANT.
823 N.W.2d 193

Filed November 16, 2012. No. S-12-178.

1. **Effectiveness of Counsel: Records: Appeal and Error.** The fact that an ineffective assistance of counsel claim is raised on direct appeal does not necessarily mean that it can be resolved. The determining factor is whether the record is sufficient to adequately review the question.
2. **Trial: Effectiveness of Counsel: Evidence: Appeal and Error.** An ineffective assistance of counsel claim will not be addressed on direct appeal if it requires an evidentiary hearing.