

Supreme Court of Louisiana

FOR IMMEDIATE NEWS RELEASE

NEWS RELEASE #013

FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the 25th day of March, 2022 are as follows:

BY Crain, J.:

2021-C-00993

DEJAUN D. KENDRICK, INDIVIDUALLY AND AS TUTRIX OF HER MINOR CHILD, JUELZ AMYRION KENDRICK VS. ESTATE OF ANTHONY MICHAEL BARRE, ANGEL C. BARRE, BARBARA C. BARRE AND STANFORD BARRE (Parish of Orleans Civil)

REVERSED. SEE OPINION.

Weimer, C.J., additionally concurs and assigns reasons.

Hughes, J., additionally concurs and assigns reasons.

Griffin, J., additionally concurs for the reasons assigned by Chief Justice Weimer.

SUPREME COURT OF LOUISIANA

No. 2021-C-00993

**DEJAUN D. KENDRICK, INDIVIDUALLY AND AS TUTRIX OF HER
MINOR CHILD, JUELZ AMYRION KENDRICK**

VS.

**ESTATE OF ANTHONY MICHAEL BARRE, ANGEL C. BARRE,
BARBARA C. BARRE AND STANFORD BARRE**

On Writ of Certiorari to the Court of Appeal, Fourth Circuit, Parish of Orleans
Civil

CRAIN, J.

Plaintiff, Dejaun D. Kendrick, individually and on behalf of her minor son, sued the estate of the deceased, Anthony Michael Barre, seeking filiation and child support. The estate filed exceptions of prescription, no cause of action, and no right of action. The trial court granted the exceptions, but the court of appeal reversed. Finding an initial child support claim cannot be brought after the father’s death, we reverse the court of appeal and reinstate the trial court’s ruling granting the exception of no cause of action.

FACTS AND PROCEDURAL HISTORY

Kendrick filed a “Petition for Filiation, Recovery of Inheritance, Child Support, and Damages” on July 24, 2018. She names Angel Barre, Barbara Barre, Stanford Barre and the estate of Anthony Michael Barre as defendants.¹ She alleges Anthony is the father of her son and, prior to his death on November 14, 2010, she and Anthony were not married but had a close, sexual relationship that was widely known by the public. Kendrick alleges Anthony knew of the pending birth of his child, was excited about welcoming a son, was present for the ultrasound, chose the

¹ Angel Barre is the succession representative and sole heir of Anthony Barre. Barbara and Stanford Barre are Anthony’s grandparents.

child's name prior to his death, and "openly acknowledge[d]" the child. The same day he attended their son's baby shower, Anthony was shot and killed. The child was born one month later. The petition alleges Anthony's family acknowledged the child after his death, named him in the obituary, organized a fund for the child, and visited him in the hospital.

Kendrick alleges that in 2015, Angel, on behalf of Anthony's estate, filed suit in federal court against Beyoncé for the unauthorized use of Anthony's intellectual property and instructed her not to interfere.² According to Kendrick, Angel assured her any damages awarded would be shared with Kendrick and her son. The federal suit settled. *See Estate of Barre v. Carter*, CV 17-1057 (E.D. La.). Kendrick's petition alleges, "Angel did not uphold her agreement that the minor child would be taken care of." She now seeks filiation for her child; child support; inheritance; and tort damages due to fraud and ill practices.

The defendants filed declinatory and dilatory exceptions, claiming the suit is an improper collateral attack on the judgment of possession rendered in Anthony's succession in 2017.³ The defendants also filed peremptory exceptions of prescription, no cause of action, and no right of action, arguing the action is untimely under Louisiana Civil Code article 197, which limits filiation claims brought "for purposes of succession" to one year following the death of the alleged father.

Prior to a ruling on the exceptions, Kendrick filed an amended and supplemental petition, which maintained claims against Anthony's estate and Angel, but omitted the tort claims and dismissed Barbara and Stanford Barre. The trial court found the amended and supplemental petition narrowed the claims to only filiation and child support.

² Mr. Barre was a local rapper known as "Messy Maya."

³ *Succession of Anthony Barre*, 2016-1799, in Division G-11 of the Civil District Court, Judge Giarusso presiding.

The trial court granted the exceptions of prescription, no cause of action, and no right of action, finding the filiation suit was untimely. The court of appeal reversed, finding the child support claim distinct from a succession claim, making the one-year peremptive period of Article 197 inapplicable. It also reversed the judgment on the exceptions of no cause of action and no right of action because “[o]nce a child proves filiation, he has a right to support from his parents.” *Kendrick v. Est. of Barre*, 20-0474 (La. App. 4 Cir. 6/9/21), 323 So. 3d 907, 917.

DISCUSSION

An exception of no cause of action questions whether the law extends a remedy against the defendant to anyone under the factual allegations of the petition. *Industrial Cos., Inc. v. Durbin*, 02-0665, p. 6 (La.1/28/03), 837 So.2d 1207, 1213. The exception is triable on the face of the petition and each well-pleaded fact in the petition must be accepted as true. *Id.* Appellate review is *de novo*. Because the exception raises a question of law based solely on the sufficiency of the petition, an exception of no cause of action should be granted only when it appears beyond doubt that the plaintiff cannot prove any set of facts which would entitle him to relief. *Barrie v. V.P. Exterminators, Inc.*, 625 So.2d 1007, 1018 (La. 1993).

The issue presented is whether a cause of action for child support exists when the petition is first filed after the father’s death. Louisiana Civil Code article 224 is the source of all child support and provides, in pertinent part, “Parents are obligated to support, maintain, and educate their child.” Louisiana Revised Statutes 9:315, *et seq.* implements the parental obligation of child support. Generally, child support is an ongoing obligation of a living parent to a minor child. La. R.S. 9:315(A) (“The premise of the guidelines as well as the provisions of the Civil Code is that child support is a continuous obligation of both parents, children are entitled to share in the current income of both parents, and children should not be the economic victims of divorce or out-of-wedlock birth.”)

While Louisiana Civil Code article 224 requires parents to support their “child,” Louisiana Civil Code article 3506 defines “children” as “those persons born of the marriage, those adopted, and *those whose filiation to the parent has been established in the manner provided by law.*” (emphasis added). Louisiana recognizes three ways to establish filiation: (1) the presumption of paternity due to a marriage to the mother (La. Civ. Code arts. 185),⁴ (2) the presumption of paternity due to a formal acknowledgment by the father (La. Civ. Code art. 196),⁵ or (3) paternity proven through a legal proceeding instituted by the child (La. Civ. Code art. 197).

Once filiation of a child to the father is established, the father’s support obligation can be pursued. *See State v. Jones*, 56 So.2d 724, 726 (La. 1951) (“Under our substantive law it is only fathers who have legally acknowledged their illegitimate offspring or who have been judicially declared to be the father of such offspring, who have a legal obligation to support them.”). *See also* Louisiana Revised Statutes 9:392(A)(5) (“Once an acknowledgment of paternity is signed, the father may be obligated to provide support for the child.”) Similarly, Louisiana Revised Statutes 9:405 states:

In child support, custody, and visitation cases, the acknowledgment of paternity by authentic act is deemed to be a legal finding of paternity and is sufficient to establish an obligation to support the child and to establish visitation without the necessity of obtaining a judgment of paternity.

Louisiana Revised Statutes 9:315.1, sets the guidelines “to be used *in any proceeding to establish . . . child support.*” Louisiana Revised Statutes 9:315.21 states “except for good cause shown,” a child support award “shall be retroactive to

⁴ Article 185 provides, “The husband of the mother is presumed to be the father of a child born during the marriage or within three hundred days from the date of the termination of the marriage.” *See relatedly* Louisiana Civil Code articles 186 and 195.

⁵ Article 196 provides, in pertinent part, “A man may, by authentic act, acknowledge a child not filiated to another man. The acknowledgment creates a presumption that the man who acknowledges the child is the father.”

the date of judicial demand” and “in no case prior to the date of judicial demand.” So, not only is child support conditioned upon legally establishing the paternal relationship, no amount is owed or accrues before suit is filed to collect it, that is, until judicial demand. In summary, a child support obligation is exigible, at the earliest, (i) when the father-child relationship is legally established *and* (ii) from the day suit is filed to collect it.

In an effort to meet these requirements, Kendrick filed both a paternity action and child support claim.⁶ She asserts the support obligation can be established after the father’s death and enforced against his estate. We reject that assertion as it cannot be reconciled with the strictly personal nature of a child support obligation.

Louisiana Civil Code article 1766 provides, in pertinent part, “An obligation is *strictly personal* when its performance can be enforced only by the obligee or only against the obligor.” (emphasis added). The child support obligation of a parent is personal. See Louisiana Civil Code article 224 (“*Parents* are obligated to support. . . their child.”) (emphasis added). As stated in *State in Int. of Minor Female Child*, 470 So. 2d 595, 596 (La. Ct. App. 1985), “Parental rights are strictly personal and as such are not heritable. The care and custody of a minor child does not devolve as a matter of right to one who is not a parent.” See also Saul Litvinoff & Ronald J. Scalise Jr., 5 La. Civ. L. Treatise, Law Of Obligations § 4.15 (2d ed. 2021) (“Institutional [family] obligations, such as those involving parental rights, are strictly personal and therefore not heritable.”)

Defendants also cite Louisiana Civil Code article 237, which states:

Descendants are bound to provide the basic necessities of life to their ascendants who are in need, upon proof of inability to obtain these necessities by other means or from other sources, and ascendants are likewise bound to provide for their needy descendants, this obligation being reciprocal. *This obligation is strictly personal* and is limited to the basic necessities of food, clothing, shelter, and health care.

⁶ Kendrick was not married to Anthony and, while the petition refers to several informal acts of acknowledgment, no formal acknowledgment occurred as required by Louisiana Civil Code article 196. Thus, no presumption of paternity arose.

(Emphasis added). This obligation to provide the basic necessities of life, while separate from a parent’s child support obligation under Article 224, is analogous and supports the conclusion that a child support obligation is strictly personal. *See also* Louisiana Civil Code article 198, which provides that a father’s action to establish paternity is strictly personal, again emphasizing the unique nature of the paternal obligation to a child.

Strictly personal obligations abate on the death of the obligor. La. Code Civ. Proc. art. 428. Here, the putative father died before his alleged child was born. Because the child support obligation is strictly personal, it ended with Anthony’s death. And because no amount of child support is owed or accrues before it is sued upon, when Kendrick filed her claim for initial child support after Anthony’s death, the obligation had already expired. Consequently, she fails to state a claim for which there is a legal remedy.

We recognize Kendrick may have other reasons to establish filiation between Anthony and her son. Our holding is expressly limited to her attempt to establish paternity for child support, which is the only purpose alleged. Having found she states no cause of action for that relief, we reverse the denial of the exception of no cause of action and pretermitt discussion of the exceptions of prescription and no right of action.⁷

⁷ Our holding does not apply to an incidental child support obligation arising during the life of the father, and evidenced by either a child support judgment predating the father’s death or a child support suit pending at the time of the father’s death, the latter potentially being owed retroactive to the date of judicial demand. These would be estate debts owed incidental to the strictly personal obligation. *See* Louisiana Civil Code article 1415 (“Estate debts are debts of the decedent . . . Debts of the decedent are obligations of the decedent . . .”) The Official Comment to Article 1415 states, “‘debts of the decedent,’ would necessarily refer to obligations that were incurred by or for the decedent during his lifetime. . . .”) *See also*, Saul Litvinoff & Ronald J. Scalise Jr., 5 La. Civ. L. Treatise, Law Of Obligations § 4.12 (2d ed. 2021) (“As already expressed, an obligation that is strictly personal to the obligor is extinguished by the death of that obligor, but that event may nevertheless produce consequences that are incidental to the obligation.”)

CONCLUSION

Finding an initial claim of child support cannot be brought after the father's death, we reverse the court of appeal's judgment on the exception of no cause of action.

REVERSED.

SUPREME COURT OF LOUISIANA

No. 2021-C-0993

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VS.

**ESTATE OF ANTHONY MICHAEL BARRE, ANGEL C. BARRE,
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*On Writ of Certiorari to the Court of Appeal,
Fourth Circuit, Parish of Orleans*

WEIMER, C.J., additionally concurring.

Whether there is a cause of action against Angel Barre, individually or as executor of the estate of her late brother, arising out of allegations she promised the estate would “take care” of the minor child and any damages (awarded due to the federal court litigation) would be shared with the child if no intervention in the federal suit was filed on behalf of the child, is not before this court.

SUPREME COURT OF LOUISIANA

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HUGHES, J., additionally concurs with reasons.

Although the majority ruling on the issue of child support is compelled by law, with which I concur, plaintiff's other claims remain viable.

In both her original and amended/supplemental petitions, the plaintiff made allegations of fact that could form the basis for the assertion that a contractual agreement was confected between Dejaun Kendrick, the plaintiff, and Angel Barre, the defendant/succession representative. See La. C.C.P. art. 862 (“...[A] final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings and the latter contain no prayer for general and equitable relief.”). Accordingly, I would find Ms. Kendrick has stated both a cause of action and right of action, at the very least, on this basis; therefore, I would remand for further litigation and, if necessary, for the amendment of the plaintiff's pleadings pursuant to La. C.C.P. art. 934.

In this case, Ms. Kendrick, individually and on behalf of her minor son, sued the estate of the deceased, Anthony Michael Barre, who she alleged was the father of her son, who Mr. Barre had publicly acknowledged as his son (including before his parents, Barbara and Stanford Barre, and his sister, Angel Barre) before the child was born. Ms. Kendrick further alleged that after Mr. Barre was killed, “the Barre family acknowledged the unborn minor child in [the] funeral obituary/program” and,

after the child's birth, the Barre family: "organized a fund for [him] ... as the son of the late Anthony Michael Barre"; included the child "in march[es] with members of the Barre family in honor of his father to call attention to the violence which ultimately robbed him of his father's existence"; and when her minor son "became extremely ill and was hospitalized on more than one occasion," "the Barre family, in particular Angel Barre, visited the minor child at the hospital." In addition, sometime in 2015 or 2016, Angel Barre (on behalf of the Estate of Anthony Michael Barre) filed suit in federal court against Beyonce' for the "unauthorized use of material of the late Anthony Michael Barre," and she "promised Ms. Kendrick that the minor child would be taken care of upon settlement of the suit" so that "Ms. Kendrick did not interfere with or assert a claim for her minor child in the federal suit."

However, even though the federal lawsuit was settled in 2018 for a "substantial amount of money," Ms. Kendrick alleged that "Angel did not contact nor did she advise Ms. Kendrick that the suit was settled" and "Angel did not uphold her agreement that the minor child would be taken care of." To the contrary, Ms. Kendrick alleged that Angel, along with Mr. Barre's parents "signed a verification attesting" that Mr. Barre never formally or informally acknowledged any children, which affidavits were filed into the succession proceeding. Angel asserted in the succession proceeding that she was the sole and only heir to the estate of her brother, and she obtained a judgment of possession in her favor, allowing her to receive all of the settlement proceeds from the federal court lawsuit.

I would conclude that these allegations of fact are sufficient to state a breach of contract claim, arising out of a contract between Ms. Kendrick and Ms. Barre. See La. C.C. art. 1967 ("...A party may be obligated by a promise when he knew or should have known that the promise would induce the other party to rely on it to his detriment and the other party was reasonable in so relying..."). See also La. C.C.

art. 1953 (“Fraud is a misrepresentation or a suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction.”); La. C.C. art. 1954 (“Fraud does not vitiate consent when the party against whom the fraud was directed could have ascertained the truth without difficulty, inconvenience, or special skill. This exception does not apply when a relation of confidence has reasonably induced a party to rely on the other's assertions or representations.”); La. C.C. art. 1955 (“Error induced by fraud need not concern the cause of the obligation to vitiate consent, but it must concern a circumstance that has substantially influenced that consent.”).