

Supreme Court of Louisiana

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FROM: CLERK OF SUPREME COURT OF LOUISIANA

The Opinions handed down on the **21st day of October, 2022** are as follows:

BY Genovese, J.:

2022-CC-00079

SUCCESSION OF ROSALIE HANDY LEWIS AND JOHN CHARLES
LEWIS (Parish of Calcasieu)

AFFIRMED. SEE OPINION.

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

Crichton, J., dissents and assigns reasons.

McCallum, J., dissents for the reasons assigned by Crichton, J.

SUPREME COURT OF LOUISIANA

No. 2022-CC-00079

**SUCCESSION OF ROSALIE HANDY LEWIS AND JOHN CHARLES
LEWIS**

On Supervisory Writ to the 14th Judicial District Court, Parish of Calcasieu

GENOVESE, JUSTICE

This is a suit for filiation/paternity filed in a succession proceeding pursuant to La. C.C. art. 197 by the putative heir, Plaintiff/Respondent, Cherie Denise Lewis Jefferson (“Ms. Jefferson”). In opposition, Defendant/Applicant, Arnold Lyle Lewis (“the administrator”), in his capacity as the administrator of the succession of John Charles Lewis (“Mr. Lewis”), filed a peremptory exception of peremption/prescription, arguing Ms. Jefferson’s filiation claim was extinguished under former La. C.C. art. 209 and could not be revived by the 2005 enactment of La. C.C. art. 197. The trial court denied the exception; the appellate court denied review; and, the administrator sought review by this Court. Due to a conflict between the appellate courts, we granted certiorari to decide this *res nova* issue, which requires this Court to determine: (1) whether the new preemptive period established by the legislature in La. C.C. art. 197 applies retroactively to Ms. Jefferson’s filiation/paternity claim; (2) if it applies retroactively, will such retroactive application deprive the heirs of a vested right, if any, to plead the defense of peremption, since Ms. Jefferson’s filiation claim had previously been extinguished under former La. C.C. art. 209; (3) if it does not deprive the heirs of a vested right, La. C.C. art. 197 applies retroactively; and (4) if it does deprive the heirs of a vested right, does La. C.C. art. 197 include a “clear and unequivocal

expression of intent by the legislature”¹ to apply Article 197 retroactively. For the reasons that follow, we affirm the trial court’s judgment denying the administrator’s peremptory exception of peremption/prescription.

FACTS AND PROCEDURAL HISTORY

There is no dispute as to the material facts in this case. Mr. Lewis was married to Rosalie Handy Lewis, and five children were born of the marriage. The administrator was one of the five children. Mr. Lewis also had a relationship with another woman, Hazel Marie Prejean Floyd (“Ms. Floyd”). Two children were allegedly born of this relationship, Cedric Wayne Lewis and Ms. Jefferson. Ms. Jefferson was born on August 15, 1966. Mr. Lewis was identified as Ms. Jefferson’s father on her birth certificate. Mr. Lewis did not sign the birth certificate as there was no signature line, and he did not formally acknowledge Ms. Jefferson.² That notwithstanding, he was involved in Ms. Jefferson’s life.

On August 28, 2020, Mr. and Mrs. Lewis, along with their adult daughter, died from carbon monoxide poisoning in the aftermath of Hurricane Laura. They died intestate. Thereafter, succession proceedings were filed, identifying the five children born of the Lewis’ marriage as their heirs. Ms. Jefferson and her brother were not listed as heirs.

The administrator filed a Petition and Order to be Appointed Independent Administrator of the estate of Mr. Lewis, and Letters of Administration were issued. The administrator filed a First and Final Tableau of Distribution, an Affidavit of Publication, a Petition to Homologate the Tableau of Distribution, and a Petition for Possession. The trial court signed a Judgment of Possession on March 8, 2021.

¹ *Chance v. Am. Honda Motor Co.*, 635 So.2d 177, 178 (La. 1994)(footnote omitted).

² Louisiana Civil Code Article 196 provides in part that “[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.”

On April 1, 2021, Ms. Jefferson filed a Petition to Reopen the Succession of Mr. Lewis, wherein she sought to be recognized as Mr. Lewis' child. She petitioned the trial court to order paternity testing as positive proof and clear and convincing evidence of paternity. In response, the administrator asserted a peremptory exception of peremption/prescription, alleging that Ms. Jefferson's claim of filiation/paternity was extinguished pursuant to former La. C.C. art. 209.

A hearing on the exception was held. The administrator introduced into evidence the following: Succession of Evans (by reference);³ Succession of John Charles Lewis (by reference); Affidavit of Publication by Administrator; Birth Certificate of Ms. Jefferson; and, Letter of Independent Administrator. Ms. Jefferson introduced into evidence the following: Act of Acknowledgment executed by Mr. Lewis, acknowledging Cedric Wayne Lewis as his son; Affidavit of Ms. Jefferson;⁴ and Affidavit of Ms. Floyd.⁵ All exhibits were admitted into evidence without objection. There was no testimony.⁶ After hearing arguments, the trial court denied the administrator's exception of peremption/prescription, stating in pertinent part: "I'm fond of justice, fairness, [and] equity. Under the facts of this case . . . arbitrary rules that people realize are arbitrary and unfair that then get changed to be not arbitrary and fair should be recognized and applied in any way that allows people justice." The trial court opined that applying the time period in La. C.C. art. 197 retroactively is what the courts should strive for unless there is a compelling reason

³ This lawsuit involves a dispute over payment of life insurance proceeds for the Lewis' daughter, who also died as a result of the carbon monoxide poisoning.

⁴ Ms. Jefferson attested that Mr. Lewis was her father and that he was involved in her life from her birth until his death. She stated that Mr. Lewis held himself out to the public as her father; for example, he walked her down the aisle at her wedding, and he visited her during holidays and family events.

⁵ Ms. Floyd attested that Mr. Lewis was Ms. Jefferson's father. She stated that Mr. Lewis held himself out to the public as Ms. Jefferson's father; for example, he attended Ms. Jefferson's birthday parties, her graduation, family events, and holidays. Ms. Floyd attested that Mr. Lewis was involved in Ms. Jefferson's life from birth until his death.

⁶ The minute entry dated June 29, 2021, mistakenly states Ms. Floyd testified. A review of the transcript indicates there was no testimony at the hearing.

not to. On July 20, 2022, a judgment was issued denying the administrator's exception. Counsel for the administrator objected and noted his intent to seek review. Thereafter, the administrator filed a writ application, and the appellate court denied the writ: "We find no error in the trial court's ruling." *Succession of Rosalie Handy Lewis and John Charles Lewis*, 21-478 (La. App. 3 Cir. 12/14/21)(unpublished). To review the correctness of this decision and to resolve an apparent conflict between the courts of appeal, we granted certiorari.

DISCUSSION

In his sole assigned error, the administrator asserts the trial court and the court of appeal committed legal error in allowing Ms. Jefferson to pursue establishing Mr. Lewis' paternity. He argues that these erroneous rulings result in La. C.C. art. 197 reviving the paternity claim, which would have been subject to the defense of peremption/prescription in 1985, in accordance with the provisions of former La. C.C. art. 209. The administrator contends that La. C.C. art. 197 should only be applied prospectively, and any other result deprives "the succession" of its right to assert prescription, arguing in pertinent part:

This Court has clearly stated in *Cameron Parish School Board v. Acands, Inc.*, 687 So.2d 84 (La. 1/31/97) . . . and *Chance v. American Honda Motor Co., Inc.*, 635 So.2d 177, that the legislative revival of previously prescribed claims denies the Defendant of the right to plead prescription. This Court describes that change as substantive as it applies to the Defendant [,] who may be deprived of the right to plead prescription. Thus, this Court has said in such circumstance, to allow retroactive application of a new law (which revives claims subject to the defense of prescription),

"we require at the very least, a clear and unequivocal expression by the Legislature for such an extreme exercise of legislative power."

See Chance, supra, Pg. 178 and *Cameron Parish School Board, supra*, Pg. 89.

He asserts that the lower courts failed to make a "factual finding that the Louisiana Legislature clearly intended to revive prescribed claims in enacting La. Civ. Code

Art. 197”; there was no evidence of legislative intent in the record; and, as a result, there is no evidentiary basis for the lower courts to apply La. C.C. art. 197 retroactively.

Ms. Jefferson counters that La. C.C. art. 197 applies and that her claim to establish paternity for succession purposes under La. C.C. art. 197 is timely, as she filed her claim within one year of her father’s death. Ms. Jefferson acknowledges that La. C.C. art. 197 makes no reference as to whether it applies retroactivity or prospectively, but she argues that had the legislature intended that certain persons be excluded from the application of La. C.C. art. 197, it could have stated so when crafting the statutory language. Ms. Jefferson asserts that the legislature permitted a new right of action to assert paternity claims in a succession proceeding if filed within one year of the decedent’s death. She argues that to not allow her claim under La. C.C. art. 197 would defeat the stated legislative intent of the article and perpetuate the same inequity that the article was created to correct.

Standard of review of peremptory exception of peremption/prescription

Both peremptive and prescriptive periods are established by the legislature. “There is no prescription other than that established by legislation.” La. C.C. art. 3457. In addition, “[p]eremption is a period of time fixed by law for the existence of a right. . . .” La. C.C. art. 3458. “Peremption is prescription which is not subject to interruption or suspension.” *Bunge Corp. v. GATX Corp.*, 557 So.2d 1376, 1379 (La. 1990)(citation omitted).⁷ In *Mitchell v. Baton Rouge Orthopedic Clinic, L.L.C.*, 21-061, p. 5 (La. 10/10/21), 333 So.3d 368, 373, this Court held that the standard of review of a judgment pertaining to an exception of prescription turns on whether evidence was introduced at the hearing of the exception. If evidence is introduced,

⁷ In *Borel v. Young*, 07-0419, p. 8 (La. 11/27/07), 989 So.2d 42, 49, *on reh’g* (7/1/08)(citation omitted), this Court expounded on how peremption differs from prescription, emphasizing that, unlike prescription, “[t]he peremptive period may not be interrupted or suspended or renounced, and exceptions such as *contra non valentem* are not applicable.”

the lower court decisions are reviewed under a manifest error-clearly wrong standard of review. *Id.* (citation omitted.) However, when evidence is introduced, but there is no dispute regarding material facts, as in this case, the reviewing court is to apply a *de novo* standard of review. *Id.* (citations omitted). In addition, as the issue involves the interpretation of La. C.C. art. 197, which is a question of law, review is also *de novo*. *John Benjamin, Sr., et al. v. William Zeichner, M.D.*, 12-1763, p. 5 (La. 4/5/13), 113 So.3d 197, 201. When applying the *de novo* standard, this Court renders judgment on the record, without deference to the legal conclusions of the lower courts. *Id.* (footnote omitted). Furthermore, in reviewing a peremptory exception of peremption/prescription, Louisiana courts strictly construe the statute against peremption/prescription and in favor of the claim that is said to be extinguished. *Rando v. Anco Insulations Inc.*, 08-1163, p. 21 (La. 5/22/09), 16 So.3d 1065, 1083 (citation omitted)(“Peremptive statutes are strictly construed against peremption and in favor of the claim. Of the possible constructions, the one that maintains enforcement of the claim or action, rather than the one that bars enforcement [,] should be adopted.”).

Filiation/intestate succession

Filiation is the legal relationship between a child and his or her parent. La. C.C. art. 178. In *Matter of Succession of Dangerfield*, 16-0293, pp. 3-4 (La. App. 1 Cir. 10/31/16), 207 So.3d 427, 429 (footnote omitted), the appellate court held, in pertinent part:

In intestate successions [absence of valid testamentary disposition (La. C.C. art. 880)], the first class of intestate heirs is the descendant class. *In re Succession of Loustalot*, 2015-0631 (La. App. 1 Cir. 11/6/15), 183 So.3d 556, 558; *see also* La. C.C. arts. 880 and 888. Included among descendants are children born of the marriage, children that have been adopted, and children born out of wedlock whose filiation has been established, as well as descendants of them in the direct line. *See* La. C.C. art. 178, 179, and 3506(8); *see also Loustalot*, 183 So.2d at 558. Under the Louisiana Civil Code, there are three ways of establishing paternal filiation, or a legal relationship between a father and child: (1) the presumption of paternity due to a marriage to the

mother (La. C.C. arts. 185, 186 and 195); (2) in the absence of a marriage, the presumption of paternity based on a formal acknowledgement by the father (La. C.C. art. 196); or (3) in the absence of a marriage between the parents or a formal acknowledgment, by the institution of a legal proceeding to prove filiation (La. C.C. art. 197).

Former La. C.C. art. 209 and the enactment of La. C.C. 197

Former La. C.C. art. 209 provided the time limits for proving filiation by a child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment:

B. A child not entitled to legitimate filiation nor filiated by the initiative of the parent by legitimation or by acknowledgment under Article 203 must prove filiation as to an alleged deceased parent by clear and convincing evidence in a civil proceeding instituted by the child or on his behalf within the time limit provided in this article.

C. The proceeding required by this Article must be brought within one year of the death of the alleged parent or within nineteen years of the child's birth, whichever first occurs. This time limitation shall run against all persons, including minors and interdicts. If the proceeding is not timely instituted, the child may not thereafter establish his filiation, except for the sole purpose of establishing the right to recover damages under Article 2315. A proceeding for that purpose may be brought within one year of the death of the alleged parent and may be cumulated with the action to recover damages.

A majority of Louisiana courts have determined the time period set forth in former La. C.C. art. 209 to be peremptive, despite some appellate courts, as well as the administrator in this case, referring to the time periods as prescriptive. *See Matherne v. Broussard*, 06-0838, p. 8 (La. App. 1 Cir. 2/14/07), 959 So.2d 975, 980 (wherein the appellate court held that “considering the explicit language of Article 209, the legislature’s purpose in enacting the article, and the state’s strong interest in the orderly disposition of property upon death, we hold that the time limitation in La. C.C. art. 209 was peremptive.”); *see also, Meaux v. Guidry*, 14-155, p. 3 (La. App. 3 Cir. 6/4/14), 140 So.3d 871, 873, *writ denied*, 14-1389 (La. 10/3/14), 149 So.3d 799; *In re Succession of James*, 07-2509, p. 3 (La. App. 1 Cir.08/21/08), 994 So.2d 120, 122, *writ denied*, 08-2302 (La. 12/12/08), 996 So.2d 1119; *Succession of Younger*, 50,876, p. 3 (La. App. 2 Cir. 9/28/16), 206 So.3d 1088,

1090, *writ denied*, 16-2202 (La. 1/25/17), 215 So.3d 685. We agree that the time periods set forth in former La. C.C. art. 209 were preemptive.⁸

In 2005, the Louisiana Legislature eliminated La. C.C. art. 209 and replaced it with La. C.C. art. 197 (2005 La. Acts No. 192 § 1), which became effective on June 29, 2005, and provides:

A child may institute an action to prove paternity even though he is presumed to be the child of another man. If the action is instituted after the death of the alleged father, a child shall prove paternity by clear and convincing evidence.

For purposes of succession only, this action is subject to a preemptive period of one year. This preemptive period commences to run from the day of the death of the alleged father.

Section 3 of Act No. 192 provides: “The provisions of this Act shall be applicable to all claims existing or actions pending on its effective date and all claims arising or actions filed on and after its effective date.” Revision comment (e)(2015) of La. C.C. art. 197 provides:

The time period for bringing the paternity action under this Article is limited to succession matters only. This is a change in the law. Prior law required that a paternity action under former Civil Code Article 209 (rev. 1984) be instituted within nineteen years of the child’s birth or within one year from the alleged parent’s death, whichever first occurred. If the action was not timely instituted, the child could not thereafter establish his filiation for any purpose, except to recover damages under Civil Code Article 2315. That was a harsh result not justified by any policy consideration. For the particular purpose of succession, on the other hand, there is a time limit on instituting the action-to facilitate the orderly disposition of estates and the stability of land titles.

This change in the law by the enactment of Article 197 repealed the requirement that a filiation action be instituted within nineteen years of the child’s birth or within one year from the parent’s death, whichever occurred first. Effective

⁸ In *Borel*, 07-0419, p. 9, 989 So.2d at 49 (citations omitted), this Court emphasized that in determining if the time period of a statute is prescriptive or preemptive, courts look to the language of the statute, the purpose behind the statute, and the public policy mitigating for or against suspension, interruption or renunciation of that time limit.

in 2005, regardless of age, a child has one year from his or her father's death to institute a filiation action in a succession proceeding. Revision comment (f) of La. C.C. art. 197 emphasizes: "The time period during which the paternity action must be instituted for succession purposes is longer than that of prior law." This time period was expressly designated as a peremptive time period by the legislature.

La. C.C. art. 6

Louisiana Civil Code Article 6 provides: "In the absence of contrary legislative expression, substantive laws apply prospectively only. Procedural and interpretive laws apply both prospectively and retroactively, unless there is legislative expression to the contrary." In *Ebinger v. Venus Const. Corp.*, 10-2516, p. 7 (La. 7/1/11), 65 So.3d 1279, 1285, this Court held that pursuant to La. C.C. art. 6, generally, peremptive/prescriptive time periods established by the legislature apply both prospectively and retroactively, writing in pertinent part:

The Louisiana Revised Statutes are not applied retroactively "unless it is expressly so stated." La. R.S. 1:2. However, the Louisiana Civil Code makes clear that this rule of statutory construction applies to substantive laws only. In the absence of contrary legislative expression, procedural and interpretive laws apply both prospectively and retroactively. La. C.C. art. 6. "[S]tatutes of limitation [the common-law analog to statutes of peremption or prescription] are remedial in nature and as such are generally accorded retroactive application." *Lott v. Haley*, 370 So.2d 521, 523 (La. 1979).

The *Ebinger* Court expounded that when it is a procedural law which establishes a period after which a plaintiff may no longer assert a claim, it applies retroactively "[s]ubject to the caveat that it may not operate to disturb a vested right." *Id.*

In *Chance v. American Honda Motor Co., Inc.*, 635 So.2d 177, 178 (La. 4/11/94)(footnote omitted), this Court held that when retroactive application of a statute results in revival of an already prescribed claim, a court must determine if retroactive application deprives a defendant of a right to plead prescription to defeat the plaintiff's claim, holding in pertinent part:

Although prescriptive statutes are generally procedural in nature [thus, applied retroactively and prospectively in accordance with La. C.C. art. 6], the revival of an already prescribed claim presents additional concerns. For while the defendant does not acquire anything during the running of the prescriptive period, once the time period has elapsed, the legislature grants the defendant the right to plead the exception of prescription in order to defeat the plaintiff's claim. La. Code Civ.P. arts. 927 & 934. Because the defendant acquires the right to plead the exception of prescription, a change in that right constitutes a substantive change in the law as applied to the defendant. *See St. Paul Fire & Marine Ins. Co. v. Smith*, 609 So.2d 809, 817 (La. 1992) ("Substantive laws either establish new rules, rights, and duties or change existing ones."); *Thomassie v. Savoie*, 581 So.2d 1031, 1034 (La. App. 1st Cir.1991) ("[I]f a statute which is remedial or procedural also has the effect of making a change in the substantive law, it must be construed to operate prospectively only."). Thus, were we to interpret the amendment at issue to allow the revival of prescribed causes of action, the substantive rights of the defendant would be materially changed because he would be stripped of this acquired defense. . . . Guided by the principles established in [La. Civ. Code] article 6, we require, at the very least, a clear and unequivocal expression of intent by the legislature for such an "extreme exercise of legislative power."

Justice Hall's concurrence in *Chance* was also instructive on this issue. He opined that the right to plead the defense of prescription was a vested right, stating:

That result is consistent with the civilian teachings that the effect of the running of prescription is to extinguish the underlying obligation. 2 M. Planiol, *Treatise on the Civil Law* § 690 (La. State Law Inst.Trans.1959) . . . *Louisiana Health Service and Indem. Co. v. McNamara*, 561 So.2d 712, 718 (La.1990) (stating that obligor's patrimony is increased when the claim prescribes and that "[obligor's] right to plead prescription in defense to a claim on the obligation is itself property that cannot be taken from him").

Chance, 635 So.2d at 180.

Current jurisprudence

Currently, there is a split in and amongst the Louisiana appellate courts on this issue. The appellate courts of the First, Fourth, Fifth, and panels of the Third Circuit Courts of Appeal have held that a filiation claim extinguished under former La. C.C. art. 209 cannot be revived under La. C.C. art. 197, as revival of such claims would deprive the defendant (or in succession cases, the heirs) of a vested right to plead the defense of peremption.

In *In re Succession of McKay*, 05-603 (La. App. 3 Cir. 2/1/06), 921 So.2d 1219, *writ denied*, 06-0504 (La. 6/2/06), 929 So.2d 1252, *writ denied*, 06-0631 (La. 6/2/06), 929 So.2d 1253, the putative heirs, when they filed their petitions for filiation, were well over the age of nineteen, and their claims for filiation were perempted under La. C.C. art. 209. During the appeal process, the legislature repealed La. C.C. art. 209 and enacted La. C.C. art. 197 (2005 La. Acts No. 192 § 1), and the putative heirs asserted La. C.C. art. 197 should be applied to their claims. The appellate court held that the putative heirs' filiation claims were perempted/prescribed under former La. C.C. art. 209. Citing *Chance*, 635 So.2d 177, it determined the filiation claim that was extinguished under former La. C.C. 209 could not be revived, stating: "We find no clear and unequivocal expression by the legislature that Article 197 revives filiation claims which have already prescribed." *In re Succession of McKay*, 05-603, pp. 5-6, 921 So.2d at 1223. The appellate court emphasized 2005 La. Acts No. 192 § 3 provides that "The provisions of this Act shall be applicable to all claims existing or actions pending on its effective date and all claims arising or actions filed on and after its effective date." *Id.* The appellate court opined, "It is clear that the intent of the legislature was to ensure that the provisions of the Act applied to causes of action that had not prescribed but were existing or already in litigation on June 29, 2005, the effective date of the Act." *Id.*, 05-603, p. 6, 921 So.2d at 1223. The appellate court concluded that La. C.C. art. 197 was not applicable to the putative heirs' already-prescribed claims. *In re Succession of McKay*, 05-603, p. 6, 921 So.2d at 1223.

In *In re Succession of James*, 994 So.2d 120, the appellate court held that former La. C.C. art. 209 applied to a case involving a filiation action filed after the plaintiff had reached her nineteenth birthday while the former article 209 was in effect, but where the alleged father died after the effective date of La. C.C. art. 197. The appellate court opined that the legislature did not clearly and unequivocally state

that the new law applied retroactively to revive the preempted claim. *In re Succession of James*, 07-2509, p. 9, 994 So.2d at 125-126.

In *In re Succession of Donald Clay Smith*, 09-969, pp. 5-6 (La. App. 3 Cir. 2/3/10), 29 So.3d 723, 726, *writ denied*, 10-0829 (La. 6/18/10), 38 So.3d 325, a panel of the Third Circuit Court of Appeal reached the same result as the panel in *In re Succession of McKay*, and the First Circuit Court of Appeal in *In re Succession of James*, adding in pertinent part:

[A] right to inherit and a right to filiate are different rights. Yet, [the putative heir] urges us to put the proverbial cart before the horse. As the *James* court [994 So.2d 120] correctly observed, in the case where the deceased is not an established parent, a filiation action is necessary *before* the alleged heir may assert the right to inherit. Thus, [the putative heir] does not have a “lawful previously non-existent right to inherit” until he proves his filiation to the deceased.

Here, [the putative heir’s] right to bring a filiation action was extinguished and ceased to exist nineteen years after his birth. Once that occurred, [the heirs] acquired the right to plead the exception of prescription. Passage of the 2005 amendment brought a substantive change to a party’s right to plead the exception. Contrary to [the putative heir’s] assertions, the Filiation of Parents and Children Act’s command to apply the amendment’s changes to “all claims existing or actions pending on its effective date” did not clearly and unequivocally express the legislature’s intent to apply the 2005 amendment retroactively so as to revive his claim.

We reiterate this court’s pronouncement in *In re Succession of McKay*, 921 So.2d 1219, and our sister jurisdiction’s holding in *In re Succession of James*, 994 So.2d 120, that, based on the language in section 3 of the Filiation of Parents and Children Act, the amendment applies to viable causes of action and not to ones that have already been extinguished.

Id., 09-969, pp. 5-6, 29 So.3d at 726; *see also*, *Jeanmarie v. Butler*, 05-1439 (La. App. 4 Cir. 10/11/06), 942 So.2d 578; *In re Succession of Faget*, 05-1434 (La. App. 1 Cir. 6/9/06), 938 So.2d 1003, *writ denied sub nom.*, 06-1719 (La. 11/9/06), 941 So.2d 40; and, *In re Succession of Bailey*, 11-147 (La. App. 5 Cir. 11/29/11), 82 So.3d 322.

In contrast, the Second Circuit and panels of Third Circuit Courts of Appeal have held that in a succession proceeding, the one year preemptive period of La.

C.C. art. 197 is applicable to all filiation claims, including those that were extinguished under former La. C.C. art. 209.

In *Succession of Younger*, 206 So.3d 1088, the putative heir, upon her father's death, filed a petition for filiation and to open the succession. The following pertinent factors were undisputed: (1) the putative heir turned nineteen-years old prior to the enactment of La. C.C. art. 197; (2) the putative heir did not file a claim for filiation within nineteen years of her birth and, thus, her right to file a filiation claim under former La. C.C. art. 209 had extinguished; (3) the putative heir's alleged father's died in 2015, after the effective date of La. C.C. art. 197; and, (4) she timely filed her filiation claim in the succession proceeding pursuant to Article 197. The heirs filed an exception of peremption/prescription arguing, that pursuant to former La. C.C. art. 209, the putative heir's claim was barred when the putative heir failed to file a claim for filiation by her nineteenth birthday. The trial court sustained the exception. The Second Circuit Court of Appeal reversed, and it opined that the time period the legislature set forth in La. C.C. art. 197 is triggered when a claim for filiation is filed in a succession proceeding, and it emphasized that a succession proceeding was triggered with the death of a person, citing La. C.C. art. 934 and La. C.C.P. art. 2811. It concluded that La. C.C. art. 197 and La. C.C art. 870 must be read *in pari materia*, holding in pertinent part:

The second clause of article 197, upon which [putative heir] relies, begins with the phrase, "for purposes of succession only." This language is an unambiguous dictate by the legislature that puts the reader on notice that this specific clause only concerns the law of succession. Moreover, comment (e) to article 197 notes that the one year peremptive period remains in article 197 only "for the particular purpose of succession." Therefore, in considering the retroactivity of art. 197 in the context of a succession, we find La. C.C. art. 870 to be applicable.

Id., 50,876, pp. 6-7, 206 So.3d at 1093. Louisiana Civil Code Article 870(B) pertinently provides that "[t]estate and intestate succession rights, including the right to claim as a forced heir, are governed by the law in effect on the date of the

decedent's death.” The appellate court emphasized that section (B) of La. C.C. art. 870 was in effect in 2005, when the legislature repealed former article 209 and enacted article 197. It continued:

The legislature is presumed to know of all existing laws, which included art. 870, when it enacted article 197. *See State v. Johnson*, 03-2993 (La. 10/19/04), 884 So.2d 568; *Theriot v. Midland Risk Ins. Co.*, 95-2895 (La. 5/20/97), 694 So.2d 184.

....

Clearly, the legislature did not repeal former article 209 and enact article 197 in its place in a vacuum, isolated and meant to be interpreted and applied independently from the rest of the Civil Code. Instead, the legislature enacted article 197 in light of the laws governing successions; this conclusion is further supported by the legislature's language choice of “for the particular purpose of succession only,” contained in the second clause of article 197. The effect of this language is that the second clause of article 197, which provides that a child not yet filiated has one year from death of the decedent to prove paternity, is triggered when a claim for filiation is filed in the context of a succession.

Succession of Younger, 50,876, p. 7, 206 So.3d at 1092. It expounded that the legislature repealed former La. C.C. art. 209 and enacted La. C.C. art. 197 based on equity and policy considerations, and that applying La. C.C. art. 197 retroactively in conjunction with La. C.C. 870 was in keeping with the legislature's purpose. *Id.*, 50,876, p. 9, 206 So.3d at 1092. The appellate court recognized that other circuits had reached a different result, but it distinguished those decisions on the basis that the courts had not considered the retroactivity of La. C.C. art. 197 in light of and in conjunction with the law governing successions as required by La. C.C. art. 870. The appellate court held, in pertinent part:

To the extent that article 197 revives a preempted claim, we find that the purpose of its enactment and the clear language of La. C.C. art. 197, which must be read in conjunction with La. C.C. art. 870, is an expression of the legislature as to the retroactive application of the statute in the specific context of a succession.

Succession of Younger, 50,876, p. 8, 206 So.3d at 1093;⁹ see also, *In re Succession of Harrison*, 48,432 (La. App. 2 Cir 11/8/13), 129 So.3d 681, writ denied, 14-0273 (La. 4/4/14), 135 So.3d 1185.

The Third Circuit Court of Appeal in *Succession of Pelt*, 17-860 (La. App. 3 Cir. 4/11/18), 244 So.3d 476, disagreed with the panels in *In re Succession of McKay*, 921 So.2d 1219, and in *In re Succession of Donald Clay Smith*, 29 So.3d 723. In *Succession of Pelt*, the putative heir, who was in her early 40's, sought to establish filiation with her deceased alleged father (who died after the effective date of La. C.C. art. 197) and intervened in the succession proceeding. The heirs filed an exception of peremption/prescription, asserting the putative heir's filiation claim had prescribed under former La. C.C. art. 209. The trial court sustained the exception, but the appellate court reversed. First, the appellate court opined that the language set forth by the legislature in 2005 La. Acts No. 192 § 3—"applicable to all claims existing or actions pending on its effective date and all claims arising or actions filed on and after its effective date"—demonstrated that the legislature intended La. C.C. art. 197 be applied retroactively.¹⁰ The appellate court recognized that there were

⁹ Notably, the appellate court in *Succession of Younger*, 50,876, p. 5, 206 So.3d at 1091 n.1, distinguished *Thomas v. Roberts*, 47-411 (La. 9/26/12), 106 So.3d 557. In the non-succession filiation case, a putative child, who was past the age of nineteen prior to the enactment of La. C.C. art. 197, filed a filiation claim against his alleged father (who was alive) after the enactment of La. C.C. art. 197. The putative child argued that with the enactment of Article 197, there was no prescriptive period for filiation actions brought by a child, except in the case of a filiation action associated with a succession. He contended that the prescriptive period of La. C.C. art. 197 applied retroactively and revived his action. The appellate court found that the time period set forth in La. C.C. art. 197 was peremptive, not prescriptive. *Id.*, 47-411, p. 3, 106 So.3d at 559. In addition, it held that La. C.C. art. 197 could not serve to revive the extinguished and nonexistent claim because such a retroactive application of La. C.C. art. 197 would deprive the alleged father of a right to plead peremption, and there was an absence of clear legislative intent to provide retroactive application of the new law. *Id.*, 47-411, p. 5, 106 So.3d at 560.

¹⁰ The appellate court opined:

[T]his state's supreme court has explicitly found this same language did show an intent by the Louisiana Legislature that the act be applied retroactively. In *Mallard Bay Drilling, Inc. v. Kennedy*, 04-1089, p. 12 (La. 6/29/05), 914 So.2d 533, 543, the court discussed the retroactivity of an act containing language that it "shall be applicable to all claims existing or actions pending on its effective date and to all claims arising or actions filed on and after its effective date." In response to this, Louisiana's supreme court stated, "It is plainly the legislature's intent that this Act be applied both retroactively and prospectively." *Id.* Further, in *Morial v. Smith & Wesson Corp.*, 00-1132, p. 10 (La. 4/3/01), 785 So.2d 1, 10, cert. denied, 534 U.S.

disagreements amongst the courts as to this interpretation. Second, it determined that La. C.C. art. 197 and La. C.C. art. 870(B) should be read *in para materia*, holding in pertinent part:

The Louisiana Legislature, under both former article 209 and current La.Civ.Code art. 197, set a separate time period for bringing filiation actions based upon succession proceedings. The language, “For purposes of succession only[,]” shows clear intent that a succession proceeding is governed by its own rules, even in filiation actions. As such, we find that La.Civ.Code art. 197 cannot be read without La.Civ.Code art. 870(B)’s directive that “succession rights . . . are governed by the law in effect on the date of the decedent’s death.” Therefore, all filiation actions raised pursuant to a succession proceeding brought after the legislature passed 2005 La. Acts No. 192, § 1, must be governed by the provisions of La.Civ.Code art. 197 per La.Civ.Code art. 870(B). Accordingly, we find that the second clause of La.Civ.Code art. 197 allows a child not yet filiated, who was born and turned nineteen while the repealed former article 209 was still in effect, to bring an action to be recognized as an heir in a succession proceeding within one year of the death of the alleged father.

Succession of Pelt, 17-860, p. 13, 244 So.3d at 485-86. In support, the appellate court emphasized the revision comment (e)(2015) of La. C.C. art. 197, writing:

[I]t is clear that the replacement of former article 209 with La.Civ.Code art. 197 by the Louisiana Legislature was based on equity and policy considerations. As such, it appears disingenuous that the legislature would intend to continue to enforce a rule that leads to a “harsh result not justified by any policy consideration” after the enactment of La.Civ.Code art. 197, based solely upon the illegitimate child’s age at the time the statute was amended. This is especially pertinent considering La.Civ.Code art. 197 explicitly does away with the requirement that a filiation action be brought before the child reaches a certain age. When read in conjunction with La.Civ.Code art. 870(B), as required by La.Civ.Code art. 197’s specific “[f]or purposes of succession only” language, however, it appears clear that this was not the legislature’s intent.

951, 122 S.Ct. 346, 151 L.Ed.2d 262 (2001), the court again addressed the legislature’s intent by the use of this specific language, stating:

Act 291 contains a clear and unmistakable expression of legislative intent regarding its intended temporal effect. Section 2 of the Act states that its provisions “shall be applicable to all claims existing or actions pending on its effective date and all claims arising or actions filed on and after its effective date.” By adopting this Section, the legislature has clearly indicated its intent that this Act be applied both retroactively and prospectively.

Succession of Pelt, 17-860, p. 6, 244 So.3d at 481-82.

Id., 17-860, p. 10, 244 So.3d at 484. Third, the appellate court held that the heirs did not have a vested right to plead peremption/prescription in a filiation claim, as their potential vested right to a peremption/prescription claim did not arise until the decedent's death, and only in their capacity as heirs. The appellate court expounded, writing in pertinent part:

If the right to plead prescription vested in an alleged father's heirs when an illegitimate child turned nineteen under former article 209 of the Louisiana Civil Code, the heirs would be able to plead prescription in a filiation action even if the alleged father was still alive and chose not to do so. They cannot. "Under Louisiana law, a cause of action accrues when a party has the right to sue." *Bourgeois v. A.P. Green Indus., Inc.*, 00-1528, p. 10 (La. 4/3/01), 783 So.2d 1251, 1259.

A "vested right" is "that case when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. The right must be **absolute, complete and unconditional**, independent of a contingency, and a mere expectancy of future benefit does not constitute a vested right."

W.R.M. v. H.C.V., 06-702, pp. 6-7 (La. 3/9/07), 951 So.2d 172, 175-76 (Johnson, J., concurring), (quoting *Sawicki v. K/S Stavanger Prince*, 01-528, p. 10 (La. 12/7/01), 802 So.2d 598, 604).

It is clear that the decedent . . . acquired the vested right to plead the exception of prescription upon [putative heir's] nineteenth birthday under former article 209, which was in effect when [putative heir] turned nineteen. "For while the defendant does not acquire anything during the running of the prescriptive period, once the time period has elapsed, the legislature grants the defendant the right to plead the exception of prescription in order to defeat the plaintiff['s] claim. La.Code Civ.P. arts. 927 & 934." [*In re Succession of*] *James*, [07-2509] 994 So.2d [120] at 123 (quoting *Chance [v. American Honda Motor Co., Inc.]*, 93-2582 (La. 4/1//94)], 635 So.2d [177] at 177-78). However, the same cannot be said of [potential heirs], who did not have any interest in [putative heir's] filiation action or, indeed, any interest in the succession until the decedent's death, and then only in their capacity as his potential heirs. "Succession occurs at the death of a person." La.Civ.Code art. 934. A succession cannot exist before the death of the deceased, and, therefore, a potential heir cannot have a right or vested claim before that time.

[Putative heir] did not attempt to filiate while the decedent was still alive[,] and[,] as such, no one can know if the decedent would have asserted his sole right to claim prescription. [Putative heir's] action against her alleged father's succession could not have existed until after his death. Similarly, [potential heirs] could not have known they would be his heirs until his death. At any time previous to that, the decedent

could have written a last will and testament and named new heirs. At no time previous could [potential heirs] have asserted an exception of prescription in [putative heir's] filiation action. It is clear that [potential heirs] did not have a “vested right” as defined by Louisiana law. *See W.R.M.*, 951 So.2d 172.

Succession of Pelt, 17-860, pp. 11-13, 244 So.3d at 485.¹¹

Application of La. C.C. art. 197

Guided by La. C.C. art. 6, the law on statutory interpretation, and current jurisprudence, we find La. C.C. 197 applies retroactively. This Court in *Borel v. Young*, 07-0419, p. 10 (La. 11/27/07), 989 So.2d 42, 49-50, set forth the law to be applied when interpreting statutes:

What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. *State v. Williams*, 00-1725, p. 13 (La. 11/28/01), 800 So.2d 790, 800; La.Rev.Stat. § 24:177(B)(1). When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the Legislature, nor shall the letter of the law be disregarded under the pretext of pursuing its spirit. La. Civ.Code art. 9; La.Rev.Stat. § 1:4; La.Code Civ. Proc. art. 5052. The plain meaning of the legislation should be conclusive. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 242, 109 S.Ct. 1026, 1031, 103 L.Ed.2d 290 (1989); *State v. Benoit*, 01-2712, p. 3 (La. 5/14/02), 817 So.2d 11, 13.

There is no ambiguity in the language of La. C.C. art. 197. The legislature expressly established a new peremptive period for filiation claims filed in a succession proceeding: “For purposes of succession only, this action is subject to a peremptive period of one year. This peremptive period commences to run from the day of the death of the alleged father.” *Id.* This is supported by revision comment (e) of La. C.C. art. 197 which provides: “This is a change in the law.”

¹¹ Markedly, in *Meaux v. Guidry*, 14-155, pp. 4-5 (La. App. 3 Cir. 6/4/14), 140 So.3d 871, 874, writ denied, 14-1389 (La. 10/3/14), 149 So.3d 799, a non-succession filiation case, the putative child over the age of nineteen sought to establish paternity against the alleged father. The appellate court held that although the legislature clearly intended to remove the nineteen-year peremptive period, it did not negate the fact that the substantive rights of the alleged father (who was alive) under former La. C.C. art. 209 were affected. Therefore, La. C.C. art. 197 did not apply retroactively, and the putative child's filiation claim was perempted.

Next, the time period set forth in La. C.C. art. 197 is peremptive, which is remedial in nature and generally accorded retroactive application, unless there is legislative expression to the contrary. La. C.C. art. 6; *Ebinger*, 10-2516, p. 7, 65 So.3d at 1285. We find no legislative expression to the contrary, and agree with the reasoning of the Second Circuit Court of Appeal in *Succession of Younger*. By reading the clear language of La. C.C. art. 197 (for succession purposes only), in conjunction with La. C.C. art. 870 (the applicable law is the one in effect when the deceased dies), it was an expression of the legislature’s intent to retroactively apply La. C.C. art. 197 in the specific context of a succession. *Succession of Younger*, 50,876, pp. 8-9, 206 So.3d at 1092-93. As discussed *supra*, revision comment (e)(2015) of La. C.C. art. 197 articulates that the prior law (former La. C.C. art. 209) “was a harsh result not justified by any policy consideration.” To interpret Section 3 of Act No. 192—“The provisions of this Act shall be applicable to all claims existing or actions pending on its effective date and all claims arising or actions filed on and after its effective date”—as an expression of the legislature to not apply La. C.C. art. 197 retroactively defeats the purpose of the enactment. Furthermore, as emphasized by the Third Circuit Court of Appeal in *Succession of Pelt*, 244 So.3d 476, there is disagreement amongst the courts as to meaning of this language.¹² Whereas, applying La. C.C. art. 197 retroactively is in keeping with the legal principle that in reviewing an exception of peremption/prescription, Louisiana courts strictly construe the statute against peremption/prescription and in favor of the claim that is said to be extinguished. *Rando*, 08-1163, p. 21, 16 So.3d 1083. This interpretation of La. C.C. art. 197 will have a constant result and be consistent with the legislative intent to do away with the harsh and unjustified peremptive period of former La. C.C. art. 209.

¹² See *Mallard Bay Drilling, Inc. v. Kennedy*, 04-1089, p. 12 (La. 6/29/05), 914 So.2d 533, 543, and *Morial v. Smith & Wesson Corp.*, 00-1132, p. 10 (La. 4/3/01), 785 So.2d 1, 10, *cert. denied*, 534 U.S. 951, 122 S.Ct. 346, 151 L.Ed.2d 262 (2001) discussed *supra* in footnote 10.

Furthermore, applying La. C.C. art. 197 retroactively to Ms. Jefferson's filiation claim filed in the succession proceeding does not deprive the heirs of a right to plead the defense of peremption under former La. C.C. art. 209. We agree with the reasoning of the Third Circuit Court of Appeal in *Succession of Pelt*, 244 So.3d 476. The heirs did not have a vested right in the filiation action, and any vested right in the succession did not become manifest until Mr. Lewis' death, and, then, only as potential heirs. Notably, former La. C.C. art. 207 provided that "[e]very claim, set up by illegitimate children, may be contested by those who have any interest therein." Louisiana Civil Code Article 207 was also repealed by the legislature in 2005 La. Acts, No. 192. Under the current law, an heir does not have an interest or vested right in the defense of peremption in a filiation claim. Upon Mr. Lewis' death and the filing of the filiation claim in the succession proceeding by Ms. Jefferson, the heirs' potential vested right in the defense of peremption under La. C.C. art. 197 was triggered. *See* La. C.C.P. art. 685 ("Except as otherwise provided by law, the succession representative appointed by a court of this state is the proper plaintiff to sue to enforce a right of the deceased or of his succession, while the latter is under administration. The heirs or legatees of the deceased, whether present or represented in the state or not, need not be joined as parties, whether the action is personal, real, or mixed.").¹³ Our decision is consistent with *Chance*, 635 So.2d 177.¹⁴

Ms. Jefferson timely filed her filiation claim in the succession proceeding; thus, the trial court's judgement denying the administrator's exception of peremption/prescription was correct.

¹³ Since the heirs are not divested of the right to plead the defense of peremption, no further analysis as to the legislature's intent is necessary

¹⁴ *See also*, *Thomas v. Roberts*, 47,411 (La. App. 2 Cir. 9/26/12) 106 So.3d 557, and *Meaux v. Guidry*, 14-155 (La. App. 3 Cir. 6/4/14), 140 So.3d 871, *writ denied*, 14-1389 (La. 10/3/14), 149 So.3d 799, discussed *supra* in footnotes 9 and 11.

CONCLUSION

The legislature expressly established a new peremptive period for filiation claims filed in succession proceedings, and this peremptive period applies retroactively. The heirs have no vested right to plead peremption under former La. C.C. art. 209; thus, retroactive application of La. C.C. art. 197 does not divest the heirs of a right to plead the defense of peremption. As Ms. Jefferson timely filed her filiation claim in a succession proceeding pursuant to La. C.C. art. 197, the trial court's judgment denying the administrator's exception of peremption/prescription is affirmed.

AFFIRMED.

SUPREME COURT OF LOUISIANA

No. 2022-C-0079

SUCCESSION OF ROSALIE HANDY LEWIS AND JOHN CHARLES LEWIS

*On Supervisory Writ to the 14th Judicial District Court,
Parish of Calcasieu*

WEIMER, C.J., additionally concurring.

I agree with the result of the majority’s opinion and its holding that the peremptive period established by Article 197 applies retroactively for filiation claims in the context of a succession. I write separately to reiterate that well-settled principles are being applied to the matter before us.

Procedural and interpretive laws, absent contrary legislative expression, are applied both retroactively and prospectively. La. C.C. art. 6. It is the legislature’s prerogative to establish prescriptive periods. La. C.C. art. 3457. As this court has noted previously, prescriptive statutes are generally procedural in nature, though the revival of an already prescribed claim may present concerns insofar as it may affect the substantive right of a defendant to plead the exception of prescription to defeat the plaintiff’s claim. **Chance v. American Honda Motor Co., Inc.**, 93-2582 (La. 4/11/94), 635 So.2d 177, 178. It is beyond doubt that the legislature, in repealing former Article 209 and enacting Article 197, established a new peremptive period for filiation claims filed in succession proceedings. La. C.C. art. 197 (“*For purposes of succession only*, this action is subject to a peremptive period of one year” from the date of the alleged father’s death (emphasis added)). See La. C.C. art. 870(B) (directing that succession rights, including claims of forced heirship, be governed by the law in effect on the date of the *decedent’s death*).

Consistent with the express instruction of La. C.C. art. 6 and the plain language of La. C.C. arts. 197 and 870(D), the starting point is the presumption that the prescriptive statute should be applied prospectively and retroactively. Nonetheless, when retroactive application of a procedural statute results in revival of an already prescribed claim, the paramount concern before the reviewing court is whether retroactive application of the procedural statute deprives the defendant of a right to assert the appropriate objection. See **Chance**, 635 So.2d at 178. “Because the defendant acquires the right to plead the exception of prescription [when the prescriptive period has elapsed], a change in that right constitutes a substantive change in the law as applied to the defendant” and must be construed prospectively only. *Id.* (citing **St. Paul Fire & Marine Ins. Co. v. Smith**, 609 So.2d 809, 817 (La. 1992), and **Thomassie v. Savoie**, 581 So.2d 1031, 1034 (La.App. 1st Cir. 1991)). As the majority opinion makes clear, when a procedural statute establishes a prescriptive period, the statute is applied retroactively as long as retroactive application does not operate to disturb a vested right. **Ebinger v. Venus Constr. Corp.**, 10-2516, p. 7 (La. 7/1/11), 65 So.3d 1279, 1285.

As the majority opinion demonstrates, no vested rights are disturbed by retroactive application of Article 197 for filiation claims in a succession. What distinguishes this matter from **Chance** is that succession does not commence until the death of the decedent. La. C.C. art. 934. At death of the decedent, the successors acquire ownership of the estate and of the things bequeathed to them. La. C.C. art. 935. The possession of the decedent is transferred to the successors, whether the succession is testate or intestate. La. C.C. art. 936. One cannot be “deprived” of a right that has not vested. The decedent was not possessed of any right, at the time of death, to plead prescription of a filiation claim instituted for the purpose of

participating in a succession that has commenced. Accordingly, the successors did not succeed to any such right that may be disturbed by retroactive application of Article 197. Further, the decedent's right to determine the beneficiaries of the donation *mortis causa* is not affected by retroactive application of Article 197. Additionally, at no point prior to the decedent's death did the succession representative or the successors have a vested right to plead prescription. Finally, at no point prior to the decedent's death did any of the successors have a vested right to participate in the succession such that any of them could be deprived, by retroactive application of Article 197, of any rights in the estate or the things in the estate.

SUPREME COURT OF LOUISIANA

No. 2022-CC-00079

**SUCCESSION OF ROSALIE HANDY LEWIS AND JOHN CHARLES
LEWIS**

On Supervisory Writ to the 14th Judicial District Court, Parish of Calcasieu

Crichton, J., dissents and assigns reasons:

For the reasons that follow, I dissent from the majority finding that La. C.C. art. 197 applies retroactively to revive petitioner’s action to establish paternity. As an initial matter, I note that the only undisputed facts in this case appear to be: (1) the date of birth of petitioner, Ms. Jefferson, (2) the date of death of the decedent, and (3) the date Ms. Jefferson filed her petition asserting filiation. These are the material facts, and accordingly the majority correctly applies the *de novo* standard of review. *Mitchell v. Baton Rouge Orthopedic Clinic*, 2021-0061, p. 5 (La. 12/10/21), 333 So. 3d 368, 373.

This Court has held that the revival of previously prescribed claims constitutes a substantive change in the law as applied to the person whose obligations were reduced by the prescription of the right. *Cameron Par. Sch. Bd. v. ACandS, Inc.*, 96-0895 (La. 1/14/97), 687 So. 2d 84, 89, quoting *Chance v. Am. Honda Motor Co.*, 635 So. 2d 177, 178 (La. 1994). The same reasoning would apply to the extinction of claims via preemption. *See* La. C.C. art. 3458 (“Unless timely exercised, the right is extinguished upon the expiration of the preemptive period.”). The legislature’s intent to engage in such “an extreme exercise of legislative power,” this Court has

held, must be clearly and unequivocally expressed. *Cameron*, 687 So. 2d at 89, quoting *Chance*, *supra*.¹ See also La. C.C. art. 6.

Act No. 192's language does not clearly and unequivocally direct its retroactive application to revive petitioner's action to establish filiation. Indeed, it states that it retroactively applies to actions "pending," which clearly does not encompass the facts at hand, and applies prospectively to actions filed on or after its effective date. La. Acts 2005 No. 192, Section 3. The legislative intent to change the applicable prescriptive or peremptive period of actions that would have been extinguished under former La. C.C. art. 209 is not only unclear or unequivocal, it is nonexistent.

Even assuming the language of Act 192 or La. C.C. art. 197 did express the legislature's intent to revive petitioner's action, I would further find that such retroactive effect would disturb a vested right. *Louisiana Health Service and Indem. Co. v. McNamara*, 561 So. 2d 712, 717 (La. 1990) (an obligor's patrimony is increased when the claim prescribes and that "[obligor's] right to plead prescription in defense to a claim on the obligation is itself property that cannot be taken from him."). Petitioner cites no authority for the proposition that a vested right of the decedent does not then become a vested right of the succession. Nor does the Civil Code recognize an action to establish paternity related to a succession that is new or different than the right of action to establish paternity before a succession. While the action to establish paternity may be brought for a variety of purposes – *e.g.*, to obtain rights to support, to inherit, and to sue for wrongful death – the action is the same. See La. C.C. art. 197, cmt. (a).

¹ *Chance*, in turn, quotes Judge Benjamin N. Cardozo, who then writing for the Court of Appeal of New York, stated: "Revival is an extreme exercise of legislative power. The will to work it is not deduced from words of doubtful meaning. Uncertainties are resolved against consequences so drastic." *Hopkins v. Lincoln Trust Co.*, 233 N.Y. 213, 135 N.E. 267, 267 (1912).

In this case, petitioner's right was extinguished, under former La. C.C. art. 209, over thirty years prior to petitioner's filing. The legislature did not clearly or unequivocally express its intent to revive this claim by the enactment of La. C.C. art. 197, nor is it clear that such revival would be constitutional. Accordingly, I would reverse the lower courts' denial of the succession administrator's exception of peremption/prescription, grant the exception, and remand for further proceedings in accordance therewith.