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<i>Miss. Code Ann. § 93-17-13 (Rev. 2004)</i>	1, 3

SUMMARY OF THE ARGUMENT

Before the Court is the reconciliation of two statutorily prescribed rules concerning inheritance rights. The first is Miss. Code Ann. § 91-1-3 (Rev. 2004), the statute prescribing the method for division and distribution of the intestate estate of Janice Kaye Jenkins. This statute seemingly provides that DeMarcus Deante Jenkins is entitled to inherit the share of his deceased mother, Stephanie Ann Jenkins, as her sole issue. The statute is designed to allow DeMarcus to step into the shoes of his deceased mother, as a sister of the decedent, Janice Kaye Jenkins, for purposes of inheriting a sister's share of the intestate estate. The second statute is Miss. Code Ann. § 93-17-13 (Rev. 2004), being the adoption statute whereby it seems that DeMarcus is entitled to inherit a share of the estate as the adopted brother of Janice Kaye Jenkins, deceased. Application of each statute independently of the other produces the incongruent result that DeMarcus, born as a nephew of the decedent, is elevated of the position of inheriting twice as much from the estate as the father, mother, brother and sister of the decedent, and a larger share than his own mother would have inherited had she survived DeMarcus. This improbable and inequitable result provides the basis for consideration of the statutes *in pari materia*.

By her own admission, the Chancellor's ruling, giving effect to each statute, produced an inequitable result. (T. 23-24; R.E. 3). Affirming this ruling would be improperly detrimental to the other seven heirs at law. The statutes should be jointly construed in such a fashion as to produce a result that protects both DeMarcus and the other heirs at law. The Chancellor's ruling places DeMarcus in a superior position to that of the natural heirs. The better reasoning is that DeMarcus is entitled by statute to take one share; either the share of his deceased mother, as her representative, or a share as the adopted brother, having been adopted by his grandparents after the death of his

mother. But it goes against reason for DeMarcus to inherit from the estate in both capacities as the representative of a deceased sister and as an adopted brother.

ARGUMENT

The issue before the Court requires consideration of *Miss. Code Ann.* § 91-1-3 (Rev. 2004) and *Miss. Code Ann.* § 93-17-13 (Rev. 2004) under the facts of the case. The parties agree that these two statutes are essential to the analysis of the issue before the Court; however, they disagree on whether the two statutes should be considered *in pari materia* and, if so, whether this Court should be concerned with the potential outcome when the statutes are construed *in pari materia*.

A. The principal statutes should be considered *in pari materia*.

DeMarcus argues that the statutes should not be considered *in pari materia*. Specifically, he argues that there is no conflict between the statutes and, therefore, the doctrine of *in pari materia* should not be relied upon to determine the correct outcome. Admittedly each statute may be applied independently of the other, as each statute is specific to inheritance rights in different contexts. But, the unusual facts of the present case seemingly place DeMarcus Deante Jenkins in two positions: the positions of the statutory representative of his deceased mother, and the adoptive brother of Janice Kaye Jenkins, his natural aunt and adoptive sister. Therefore, each statute is applicable and should be read together to produce a logical result in accordance with the legislative intent.

It is not required that statutes be in direct conflict with one another to be construed *in pari materia*. Rather, the doctrine of *in pari materia* specifies that if a statute is ambiguous on a subject, then the court must resolve the ambiguity by interpreting the statute consistently with other statutes dealing with a similar subject. *State ex rel. Hood v. Madison County ex rel. Madison County Bd. of Sup'rs*, 873 So. 2d 85 (Miss. 2004) (citing *James v. State*, 731 So. 2d 1135, 1138 (Miss. 1999)). Here, it is not the language of the principal statutes that is ambiguous, but rather the incongruent outcome when both are applied under the facts of this case. Neither the language of the adoption

statute nor that of the inheritance statute provides sufficient guidance by which the result may be logically resolved under these facts. Applicable principles of statutory construction require that these statutes, addressing the same subject matter, should be interpreted so as to harmonize with each other and to fit into the general and dominant policy of the particular system of which they are a part. *Andrews v. Waste Control, Inc.*, 409 So. 2d 707, 713 (Miss. 1982) (citing *Ashcraft v. Board of Supervisors of Hinds County*, 204 Miss. 65, 36 So. 2d 820 (Miss. 1948)).

In *Taylor v. Jackson*, the Court found that statutes similar to those before this Court should be construed *in pari materia*. 12 So. 2d 144, 148 (Miss. 1943). The statutes at issue in *Taylor* were Miss. Code Ann. § 91-1-15, applicable to descent among illegitimates, and Miss. Code Ann. § 91-1-5, applicable to descent among kindred of the whole blood and half-blood. *Taylor* involved a contest among the collateral heirs of the decedent, cousins of the whole-blood and cousins of the half-blood. *Id.* at 145. The Court reasoned that the statute allowing illegitimates to inherit from their mother and from her other children and from her kindred according to the statutes of descent and distribution, and the statute giving right of the whole blood to inherit to the exclusion of the half blood, in equal degree, are “*in pari materia*” and should be construed together. *Id.* at 147-148 (emphasis added). The *Taylor* Court found that Section 91-1-15 directs that illegitimates shall inherit from their mother, and from her other children, and from her kindred, according to the statutes of descent and distribution, and therefore, the Court considered the intestate succession statute *in pari materia* with the statute applicable to inheritance by illegitimates. *Id.* at 146 (emphasis added). In the instant case, the statute granting inheritance rights to an adopted child should be construed *in pari materia* with Mississippi’s intestate succession statute granting inheritance rights to the only child of a deceased sister since the adopted child (brother) and the only child of the deceased sister are the same person.

Appellee argues that this Court should “strictly construe” each statute ultimately allowing DeMarcus to inherit two shares by giving effect to each statute. To support this argument, Appellee cites *Walker v. Whitfield Nursing Center, Inc.*, 931 So. 2d 583 (Miss. 2006), and *Arceo v. Tolliver*, 949 So. 2d 691 (Miss. 2006).

The Appellee’s reliance on these two cases is misplaced as the facts of *Walker* and *Arceo* are clearly distinguishable from the present case. In both cases, the court was asked to interpret the meaning of certain ambiguities in one statute as applied to a particular case. *Walker*, 931 So. 2d 583; *Arceo*, 949 So. 2d 691. Most significant is the fact that neither *Walker* nor *Arceo* involve the doctrine of *in pari materia*. Unlike *Walker* and *Arceo*, the present case requires the consideration of two statutes bearing on the proper distribution of the decedent’s estate. Although *Walker* and *Arceo* were brought by the Administratrices of the respective estates, *Walker* was a wrongful death suit and *Arceo* was based on a claim of medical malpractice. Neither *Walker* nor *Arceo* involved the statutes at issue in the present case, nor inheritance rights.

In the instant case, the question is whether the principal statutes, when considered together, require that DeMarcus inherit from the decedent’s estate in two capacities: as the representative of his deceased mother, a natural sister of the decedent, and as an adopted brother. The ultimate decision before this Court is whether the applicable statutes, when considered *in pari materia*, confer upon DeMarcus, as one person, the right to take the shares of two siblings of the decedent.

B. The results of construing the statutes *in pari materia* should be considered.

The Appellee's final argument is that if this Court finds that the statutes should be construed *in pari materia*, the Court should not concern itself with the results. The argument continues that only the intent of the Legislature should be examined and, since both statutes are applicable, each statute should be given effect.

Contrary to the Appellee's argument, this Court has specifically held that the consequences of statutory construction should be considered and when reasonably possible, the adoption of an interpretation bringing about an inexplicable result should be avoided. *Clark v. State*, 858 So. 2d 882, 884 (Miss. App. 2003). Moreover, statutes should be construed to produce reasonable results and not uncertainty or confusion. *Kellum v. Johnson*, 115 So. 2d 147 (Miss. 1959). Willena Jenkins, as Administratrix, submits that this is an appropriate case for consideration of the results of the application of the statutes.

Statutes relating to the same subject matter in general should be construed together to give effect to each if possible. *Life Casualty Ins. Co. v. Walters*, 177 So. 47 (Miss. 1937). As previously stated in the principal brief of the Administratrix, it is not possible to give full, cumulative, effect to both the adoption statute and the intestate succession statute as such would yield illogical and inequitable results. To do so requires a determination that by statute one individual, here DeMarcus, represents the interests of two separately identified individuals (a sister's issue and a brother) for purposes of inheritance. This interpretation produces a perplexing result.

This Court has held that statutes should not be construed so as to reach an unreasonable result. *Miss. Ins. Guaranty Ass'n v. Vaughn*, 529 So. 2d 540, 542 (Miss. 1988); *Brady v. John Hancock Mut. Life Ins. Co.*, 342 So. 2d 295, 303 (Miss. 1977). When interpreting statutes, "a




common sense view” should apply to the extent the statutes allow. *McMillan v. Aru*, 773 So. 2d 355, 365 (Miss. App. 2000). The present case allows for a common sense approach. DeMarcus should be found eligible to inherit one share as the adopted brother or his mother’s share through representation. A common sense result is not achieved if one individual is found eligible to assert the inheritance rights of two siblings. DeMarcus, as one individual, should not inherit twice the amount that the natural parents and natural siblings of Janice Kaye Jenkins inherit. This result would be contrary to the general estate distribution scheme applicable to intestate estates under Section 91-1-3.

Appellee’s assertion that the correct analysis is to determine the Legislative intent does not carry the day for DeMarcus. The statutes do not support an argument that it was the intent of the Legislature for an adopted heir to inherit a greater share than that of the decedent’s natural parents and natural siblings. In *Dodds v. Deposit Guaranty Nat. Bank*, this court determined that the Legislative intent in allowing adopted children to inherit from their adoptive families is to elevate the adopted child to the same status in law as that of the natural child. 371 So. 2d 878, 881 (Miss. 1979) (emphasis added). The policy, however, of the Legislature was not to give the adopted child a superior status to that of the natural children. To require as a matter of statutory application and construction that DeMarcus shall inherit two shares goes further than the Legislature intended in that such a construction has the effect of penalizing the other heirs at law, including the natural parents and siblings.

CONCLUSION

The Chancellor determined that she should enforce strict statutory construction and thereby, gave full effect to each statute. Giving full, cumulative effect to each statute produced an inequitable and unreasonable result. The better analysis in the present case is to harmonize the application of the statutes in such a way as to produce a practical, logical and equitable result. The statutes should be read *in pari materia* and common-sense reasoning applied. Treating one individual as falling within the classification of two separate individuals (a sister by representation and a brother) produces an illogical result. This result would inexplicably place DeMarcus in a superior position to that of the other natural heirs of Janice Kaye Jenkins. The proper protection of all heirs at law requires reading and applying the applicable statutes as a whole in such a way as to protect equally the rights of DeMarcus Deante Jenkins, and the rights of the other seven heirs at law of Janice Kaye Jenkins, deceased. Reading the statutes *in pari materia* under these facts should produce a result that is in agreement with the legislative intent to fairly and equitably protect the rights of all heirs at law. Thus, the judgment should be reversed, and the net estate of Janice Kaye Jenkins, deceased, should be divided into eight (8) shares with each of her heirs at law receiving an equal one-eighth (1/8) share.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I, **Jamie G. Houston III**, one of the attorneys for the Appellant, do hereby certify that I have this day served a true and correct copy of the foregoing Reply Brief of Appellant by mailing this day, by First Class U.S. Mail, postage prepaid, a true and correct copy of same to the following:

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This, the 19th day of December 2007


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