IN THE SUPREME COURT OF MISSISSIPPI

WILLENA JENKINS	**APPELLANT**
VS.	**NO. 2007-CA-01166**
DeMARCUS DEANTE JENKINS	**APPELLEE**

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certify that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and the judges of the Court of Appeals may evaluate possible disqualification or recusal.

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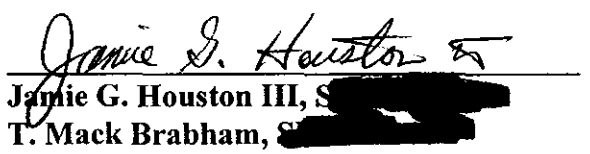
Linda Faye Jenkins Adams, living sister of Janice Kaye Jenkins
Lisa Michelle Jenkins, living sister of Janice Kaye Jenkins
John Ellis Jenkins, living brother of Janice Kaye Jenkins
Shirley Rosetta Jenkins, living sister by adoption of Janice Kaye Jenkins



Jamie G. Houston III, S[redacted]
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STATEMENT OF THE ISSUE

The issue before the Court on this appeal is the proper apportionment of the intestate estate of Janice Kaye Jenkins among the adjudicated heirs at law. Specifically, is the net estate to be distributed in eight equal shares to the eight heirs at law, or is one of the heirs, DeMarcus Deante Jenkins, entitled to a double share such that he receives two shares equal to two-ninths (2/9) of the net estate and the other heirs receive a single share equal to one-ninth (1/9) of the net estate? Expressed differently, do the statutes that provide the methodology for apportioning an intestate estate, and that establish the status of an adopted child for purposes of inheritance, require that DeMarcus Deante Jenkins be elevated to a position of taking two shares of the estate as compared to one share for the other seven heirs at law?

STATEMENT OF THE CASE

1. **The nature of the case.** The proper apportionment of the intestate estate of Janice Kaye Jenkins among the heirs at law is the subject of this case. The manner by which such an estate is apportioned is set forth in *Miss. Code Ann.* § 91-1-3 (Rev. 2004). The statutorily prescribed division of an intestate estate is dependent upon the number of heirs at law surviving the decedent and their relationship to the decedent at the time of the decedent's death. *Id.* An additional feature of the statute is that it grants the right of inheritance through representation to the descendant of an heir who predeceased the decedent. *Id.* The descendant will inherit the share his or her parent would have received if the parent had survived the decedent. *Id.*

In this case, Janice Kaye Jenkins died leaving no surviving spouse, child or descendant of a child. Where this occurs the statute prescribes that the estate is to be divided equally between the brothers and sisters and father and mother of the intestate decedent. *Id.* This part of the statute goes on to provide that the descendants of a deceased sister or brother inherit their deceased parent's share of the intestate estate. *Id.* In this case DeMarcus Deante Jenkins is the only surviving child of Stephanie Ann Jenkins, a predeceased sister of Janice Kaye Jenkins. DeMarcus thus steps into the shoes of his mother to inherit a sister's share of the estate.

After his mother's death DeMarcus was legally adopted by his grandmother and grandfather, Willena Jenkins and Edward Jenkins, Jr. They are also the father and mother of Janice Kaye Jenkins, deceased, and Stephanie Ann Jenkins, deceased.

Mississippi's adoption statute, *Miss. Code Ann.* § 93-17-13 (Rev. 2004)[1] prescribes the status of an adopted child for purposes of inheritance. This statute treats an adopted child as if the child had been born unto the marriage, thus granting the adopted child the right to inherit from adoptive siblings. *Id.* As a result of his adoption by his grandparents, Willena Jenkins and Edward Jenkins, Jr., it appears that DeMarcus is entitled to inherit a share as the adopted brother of Janice Kaye Jenkins, deceased.

There is no controversy as to the Chancery Court's adjudication of the heirs at law of Janice Kaye Jenkins. The only issue is whether the statute on the division of an intestate estate among the heirs at law, and the separate statute establishing the status of an adopted child, require that DeMarcus be apportioned two shares of the estate, while the remaining seven heirs at law are each given one share. The question is not whether DeMarcus can inherit from his deceased mother's estate, or from his adoptive parents (his grandparents' estates). Here, the estate is that of his aunt (his deceased mother's natural sister). All the inheritance comes only from the Janice Kaye Jenkins estate, not his natural parent or his adoptive parent. The unsettled question is whether the two principal statutes, when read together, require that DeMarcus, as one person, be given the shares of two siblings of the decedent, one as the representative of his deceased mother (the natural sister of Janice Kaye Jenkins), and another as the adopted brother of Janice Kaye Jenkins.

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[1] This Section was amended effective July 1, 2007 but the amendment has no effect on the present issue before the Court.

2. **The course of the proceedings**.[2] Janice Kaye Jenkins died on January 20, 2007. (Ex. 1[1]). By decree dated January 31, 2007, the conservatorship estate, under which Janice Kaye Jenkins was the ward, was converted to the administration of the estate of Janice Kaye Jenkins, deceased. (Ex. 1[4]). Willena Jenkins was appointed Administratrix of the estate of Janice Kaye Jenkins, deceased. (Ex. 1[5]). Letters of Administration, which remain in full force and effect, were issued to Willena Jenkins by the Clerk of the Pike County Chancery Court on January 31, 2007. (Ex. 1[6]). The Administratrix filed her Petition For Adjudication of Heirship on February 12, 2007. (Ex. 1[8]). All required notice was given to the known and unknown heirs of Janice Kaye Jenkins in connection with said petition. Janice Kaye Jenkins left no surviving spouse and no surviving child or more remote descendant. (Ex. 1[3]). At the hearing on the Petition For Adjudication of Heirship on May 29, 2007, the Chancellor adjudicated the heirs of Janice Kaye Jenkins, deceased, to be the following:

1. Willena Jenkins, living mother;
2. Edward Jenkins, Jr., living father;
3. Glen Edward Jenkins, living brother;
4. Linda Faye Jenkins Adams, living sister;
5. Lisa Michelle Jenkins, living sister;
6. John Ellis Jenkins, living brother;
7. Shirley Rosetta Jenkins, living sister by adoption; and

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2 References in this Brief to the Chancery Court's Record Excerpts will be by the abbreviation "R.E." References to the Exhibit introduced in the court below will be by the abbreviation "Ex." References to the subparts in Ex. 1 will be by subpart in brackets, i.e. Ex. 1[1]. References to the transcript will be by the abbreviation "T" and to the Clerk's Papers by the abbreviation "C.P."

8. DeMarcus Deante Jenkins, living minor brother by adoption.

(Ex. 1[8]).

The Administratrix then filed her Petition For Allowance of Certain Claims, Allowance of Fees, Authority to Make a Partial Distribution of the Estate and For Other Relief on May 29, 2007 in which the Administratrix requested that the Chancery Court adjudicate the apportionment of the estate. (C.P. 16.) All required notice was given to the heirs of Janice Kaye Jenkins in connection with said petition. A hearing was held on the Petition For Allowance of Certain Claims, Allowance of Fees, Authority to Make a Partial Distribution of the Estate and For Other Relief on June 21, 2007 where the Chancellor issued a final judgment, finding and holding that DeMarcus is entitled to two (2) shares of the net estate such that he receives a 2/9 share of the estate, and the other heirs-at-law each receive a 1/9 share of the net estate. (C.P. 41; T. 23-24) This appeal is brought by Willena Jenkins in her capacity as Administratrix of the estate of Janice Kaye Jenkins.

3. <u>Statement of facts</u>.

The following statement is based on the uncontradicted facts relied on by the Chancellor.

Janice Kaye Jenkins died intestate on January 20, 2007. (Ex. 1[1]). At the time of her death, Janice Kaye Jenkins had a fixed place of residence in, and was a resident of, Pike County, Mississippi. (Ex. 1[2]). She left no surviving spouse and no surviving child or more remote lineal descendant.(Ex. 1[3]). At the time of her death, Janice Kaye Jenkins was a ward under a conservatorship proceeding pending the in Chancery Court of Pike County, Mississippi. (Ex. 1[4]). By Decree of the Chancery Court of Pike County dated January 31, 2007, the Conservatorship Estate

of Janice Kaye Jenkins was converted to the Administration of the Estate of Janice Kaye Jenkins, deceased.[3] (Ex. 1[4]).

Pursuant to the Chancellor's decree, dated January 31, 2007, Willena Jenkins, the mother of Janice Kaye Jenkins, was appointed to serve as Administratrix of the Estate of Janice Kaye Jenkins, deceased. (Ex. 1[6]). The Chancery Clerk of Pike County, Mississippi, issued Letters of Administration to Willena Jenkins on January 31, 2007. (Ex. 1[6]). The Letters of Administration remain in full force and effect, having not been revoked or modified. (Ex. 1[6]).

Willena Jenkins fulfilled the duties imposed upon her with respect to the identification of persons who might have a claim against the estate and the handling of claims and debts of the estate, including the filing of her Affidavit as Administratrix and the causing of a Notice to Creditors to be published in the McComb *Enterprise Journal*. (Ex. 1[7]). The Notice to Creditors was published on February 9, February 16 and February 23, 2007, in the McComb *Enterprise Journal*. (Ex. 1[7]). No appearance was made by any individual claiming to be an heir of Janice Kaye Jenkins, deceased, other than Willena Jenkins, Edward Jenkins, Jr., Glen Edward Jenkins, Linda Faye Jenkins Adams, Lisa Michelle Jenkins, John Ellis Jenkins, Shirley Rosetta Jenkins, and DeMarcus Deante Jenkins.

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[3] Stephanie Ann Jenkins died on December 7, 1993, predeceasing her natural sister, Janice Kaye Jenkins. (Ex. 1[11]). Stephanie Ann Jenkins left one living descendant, DeMarcus Deante Jenkins, her minor son and natural child. (Ex. 1[12]). Subsequent to his mother's death, DeMarcus was lawfully adopted by Willena Jenkins and Edward Jenkins, Jr., his natural grandmother and natural grandfather, by decree of the Chancery Court of Pike County, Mississippi, dated April 18, 1997. (Ex. 1[13]). The Decree of Adoption did not preclude or limit the right of DeMarcus to inherit from the estate of his mother, Stephanie Ann Jenkins.(Ex. 1[14]).

Willena Jenkins and Edward Jenkins, Jr., also adopted Shirley Rosetta Jenkins under decree of the Chancery Court of Pike County, Mississippi, dated April 18, 1997. (Ex. 1[15]). Shirley Rosetta Jenkins is not the natural sister of Janice Kaye Jenkins or the descendant of a natural sibling of Janice Kaye Jenkins. (Ex. 1[15]).

During the course of the administration of the estate, Willena Jenkins, acting as Administratrix, sought an adjudication by the Chancery Court of Pike County, Mississippi, of the heirs-at-law of Janice Kaye Jenkins, deceased. (Ex. 1[8]). A hearing was held in the Chancery Court of Pike County, Mississippi, on May 29, 2007, at which the court adjudicated the heirs-at-law of Janice Kaye Jenkins, deceased, to be the following:

A. Willena Jenkins, living mother
B. Edward Jenkins, Jr., living father
C. Glenn Edward Jenkins, living brother
D. Linda Faye Jenkins Adams, living sister
E. Lisa Michelle Jenkins, living sister
F. John Ellis Jenkins, living brother
G. Shirley Rosetta Jenkins, living sister (by adoption)
H. DeMarcus Deante Jenkins, living minor brother (by adoption)

(Ex. 1[8]).

Willena Jenkins then filed her Petition For Allowance of Certain Claims, Allowance of Fees, Authority to Make a Partial Distribution of the Estate and For Other Relief on May 29, 2007. (C.P. 16.) All required notice was given to the heirs of Janice Kaye Jenkins in connection with said petition. A hearing was held on the Petition For Allowance of Certain Claims, Allowance of Fees, Authority to Make a Partial Distribution of the Estate and For Other Relief on June 21, 2007 where the Chancellor issued a final judgment, finding that DeMarcus is entitled to two (2) shares of the net estate such that he receives a 2/9 share of the estate, and the other heirs-at-law each receive a 1/9 share of the net estate. (C.P. 41; T. 23-24)

SUMMARY OF THE ARGUMENT

Under Mississippi's laws of descent and distribution, each of the eight heirs at law would generally be entitled to receive an equal one-eighth (1/8) share of the net estate of the decedent. An unusual issue arises in this case, however, with respect to DeMarcus, the decedent's living minor brother by adoption. The statute prescribing the method for division and distribution of the intestate estate provides that DeMarcus is entitled to inherit the share of his deceased mother, Stephanie Ann Jenkins, as her sole issue.[4] As a result of his adoption by his grandparents, Willena Jenkins and Edward Jenkins, Jr., it appears that DeMarcus is entitled to inherit a share of the estate as the adopted brother of Janice Kaye Jenkins, deceased.[5] Before the Court is the reconciliation of these statutorily prescribed rules where a single individual occupies a dual status as the sole surviving child of a deceased natural sister, and as an adopted brother.

The Chancellor found and held that DeMarcus is entitled to inherit two (2) shares of the net estate, and that the net estate of Janice Kaye Jenkins should be divided into nine (9) equal shares, with each of the seven (7) heirs other than DeMarcus receiving a one-ninth (1/9) share and DeMarcus receiving a two-ninths (2/9) share of the net estate.

By her own admission, the Chancellor's decision produces an inequitable result. The Chancellor stated in her opinion from the bench:

> ". . . this is the type matter that's entitled to a strict statutory construction. That to disinherit a child is a derogation of the common law and that absent either the Legislature specifically changing the law to disinherit him or to prohibit him from double dipping as we're going to refer to it or the Supreme Court making a judicial determination that it was the Legislature's intent to do so or finding fault with the chancellor's reasoning, I'm going to *despite the apparent inequity that is resulting,*

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[4] *Miss. Code Ann.* § 91-1-3 (Rev. 2004).

[5] *Miss. Code Ann.* § 93-17-13 (Rev. 2004).

> the court finds that he is entitled to inherit both as a sibling of the decedent and as the surviving child of a predeceased sibling."

(T. 23-24); emphasis added

The Chancellor found that the issue before the Court required strict statutory construction and her ruling gave effect to each statute. The result inured to the benefit of DeMarcus, but to the detriment of the other seven heirs at law. The principal statutes should be construed *in pari materia* to produce a result that protects both DeMarcus and the other heirs at law. Here, it is not logical to give effect to both statutes as a means for providing DeMarcus with a double share of the estate. To give full effect to both statutes under these facts causes DeMarcus to inherit a greater share of the net estate than will the natural parents and natural siblings of the decedent. The placement of the adopted heir in a superior position to that of the natural heirs is illogical. The better reasoning is that DeMarcus is entitled by statute to take the share of his deceased mother, as her representative, or as the adopted brother, having been adopted by his grandparents after the death of his mother, but not in both capacities as the representative of a deceased sister <u>and</u> as a brother.

287 (Miss. 1947)." *State ex rel. Hood v. Madison County Bd. of Sup'rs*, 873 So. 2d 85, 88 (Miss. 2004).

In the instant case the issue is not whether DeMarcus is eligible under law to inherit from the estate of his deceased natural aunt. The question is whether the statutes require that DeMarcus inherit from her estate in two capacities: as the representative of his deceased mother, a natural sister of the decedent, and as an adopted brother. The inheritance comes only from the Janice Kaye Jenkins estate- not from his mother's estate or from the estate of either of his grandparents as his adoptive parents. The unsettled question is whether the applicable statutes confer upon DeMarcus, as one person, the right to take the shares of two siblings of the decedent.

B. Statutory Framework

The parties agree that the two statutes essential to an analysis of the issue before the Court are *Miss. Code Ann.* § 91-1-3 and *Miss. Code Ann.* § 93-17-13; however, they disagree on the correct outcome when the two statutes are read together. The principal statutes are:

1. Interpretation of *Miss. Code Ann.* § 91-1-3. Realty.

Mississippi's intestate succession statute provides the following:

> When any person shall die seized of any estate of inheritance in lands, tenements, and hereditaments not devised, the same shall descend to his or her children, and their descendants, in equal parts, the descendants of the deceased child or grandchild to take the share of the deceased parent in equal parts among them. When there shall not be a child or children of the intestate nor descendants of such children, then to the brothers and sisters and father and mother of the intestate and the descendants of such brothers and sisters in equal parts, the descendants of a sister or brother of the intestate to have in equal parts among them their deceased parent's share. If there shall not be a child or children of the intestate, or descendants of such children, or brothers or sisters, or descendants of them, or father or mother, then such estate shall descend, in equal

> parts, to the grandparents and uncles and aunts, if any there be; otherwise, such estate shall descend in equal parts to the next of kin of the intestate in equal degree, computing by the rules of the civil law. There shall not be any representation among collaterals, except among the descendants of the brothers and sisters of the intestate.

Miss. Code Ann. § 91-1-3 (Rev. 2004) (emphasis added)

The key statutory language preserves in DeMarcus the right to inherit his deceased mother's share, as her sole descendant. Had Stephanie Ann Jenkins survived her sister, Janice Kaye Jenkins, Stephanie would have been entitled to an equal share of the net estate.[6] The objective of the pertinent portion of the statute seems to be to place DeMarcus in the shoes of his deceased mother such that he is entitled to receive the share she would have otherwise received. With eight heirs at law who are the brothers and sisters, and father and mother of the decedent, and, in DeMarcus' case, the sole surviving child of the only deceased sibling, DeMarcus' eligibility to receive an equal share of the net estate seems to be clearly established.

2. Interpretation of *Miss. Code Ann.* § 93-17-13. *Final decree and effect thereof.*

Mississippi's adoption statute sets forth the effect of a final decree of adoption:

> The final decree shall adjudicate, in addition to such other provisions as may be found by the court to be proper for the protection of the interests of the child; and its effect, unless otherwise specifically provided, shall be that (a) the child shall inherit from and through the adopting parents and shall likewise inherit from the other children of the adopting parents to the same extent and under the same conditions as provided for the inheritance between brothers and sisters of the full blood by the laws of descent and distribution of the State of Mississippi, and that the adopting parents and their other children shall inherit

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6 The adoption of DeMarcus occurred after the death of his mother. Had she survived one may surmise that DeMarcus would not have been adopted by his grandparents, and the issue before the Court would never have arisen.

> from the child, just as if such child had been born to the adopting parents in lawful wedlock; (b) the child and the adopting parents and adoptive kindred are vested with all of the rights, powers, duties and obligations, respectively, as if such child had been born to the adopting parents in lawful wedlock, including all rights existing by virtue of Section 11-7-13, Mississippi Code of 1972; provided, however, that inheritance by or from the adopted child shall be governed by subsection (a) above; (c) that the name of the child shall be changed if desired; and (d) that the natural parents and natural kindred of the child shall not inherit by or through the child except as to a natural parent who is the spouse of the adopting parent, and all parental rights of the natural parent, or parents, shall be terminated, except as to a natural parent who is the spouse of the adopting parent. Nothing in this chapter shall restrict the right of any person to dispose of property under a last will and testament.

Miss. Code Ann.§ 93-17-13 (Rev. 2004) (emphasis added)

The emphasized language seems to clearly provide that DeMarcus, as the adopted child of Willena and Edward Jenkins, Jr., is to be treated as the full blood brother of Janice Kaye Jenkins for purposes of inheriting from her estate.

The Mississippi Legislature has in Section 91-1-3, protected the right of DeMarcus to inherit the share of the estate of Janice Kaye Jenkins that his mother, Stephanie Ann Jenkins, would have inherited had she survived Janice. The Mississippi Legislature has also created the right, in Section 93-17-13, for an adopted child to inherit from the children of the adopting parents as if they were "brothers and sisters of the full blood by the laws of descent and distribution. . ."

Under the unusual facts of this case DeMarcus Deante Jenkins seemingly occupies the positions of the statutory representative of his deceased mother, and the adoptive brother of Janice Kaye Jenkins, his natural aunt and adoptive sister.

The Mississippi Supreme Court has addressed the right of an adopted child to inherit from his natural parents and has deemed the statutory language to be clear that in absence of a statute or decree to the contrary, an adopted child inherits from his or her natural parents as well as from or through his adoptive parents. *Sledge v. Floyd*, 104 So. 163, 164 (Miss. 1925)[7]. Following *Sledge v. Floyd*, the Mississippi Supreme Court has continued to hold that the right of an adopted child to inherit from his or her natural parents is not terminated by the child's subsequent adoption. *See Alack v. Phelps*, 230 So. 2d 789, 793 (Miss. 1970) ("Mississippi's adoption law does not state in any shape, form or fashion that the right of the child to inherit from its natural parents is terminated."); *Warren v. Foster*, 450 So. 2d 786 (Miss. 1984) (holding that the right of an adopted child to inherit from both natural and adoptive parents remained even after the adoption statute was amended in 1954). According to the *Alack* court, an interpretation that an adopted child may inherit from his or her natural parents is in accordance with the clear intent of the Mississippi Legislature:

> 'In the absence of a statute to the contrary, although the child inherits from the adoptive parent, he still inherits from or through his blood relatives, or his natural parents. In view of the tendency of the courts to construe adoption statutes so as to benefit the child, as pointed out above in [Section] 6 of this Title, and also, in view of the fact that a statute severing the relation between parent and child is in derogation of common law and should for that reason be strictly construed, it has been held that an adoption statute providing that the natural parents shall be divested of all legal rights and obligations with respect to such child should not be construed so as to deprive the child of its right to inherit from or through its natural parents. Under such a statute it cannot be assumed that the adopted child cannot inherit from its natural parent unless there is an express legislative declaration to that effect.'

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In the instant case, the Decree of Adoption does not preclude DeMarcus from inheriting from his natural mother.

Alack, 230 So. 2d at 793 (quoting 2 C.J.S. *Adoption of Children* § 63(c) (1936)).

The Mississippi Court of Appeals has also interpreted the effect of Mississippi's intestate succession laws concerning the rights of an adopted child and has ruled that an adopted child has full rights to inherit from his natural family as if there had been no adoption. *In re Estate of Yount*, 845 So. 2d 724 (Miss. Ct. App. 2003). The court's reasoning was based on the premise that minor children should be protected from losing their birthright without consent or knowledge. *Id.* at 727. The court's decision in *Yount* reflected an ongoing tendency under Mississippi case law to pattern their interpretations of the adoption statute in order to benefit the child. *Id.* (citing *Alack*, 230 So. 2d at 792-93.) ("The tendency of the courts is to construe adoption statutes so as to benefit the child.")

C. The Doctrine of *In Pari Materia.*

The issue before the court requires the interpretation and reconciliation of the two statutes discussed above. The rules of statutory construction are instructive where two statutes, when read independently of each other, produce a seemingly illogical result. In *Wilbourn v. Hobson*, the Mississippi Supreme Court quoted its earlier opinion wherein it was stated:

> It is ... a rule of law that in its effort to construe a statute the courts must seek to ascertain the legislative intent of the statute in question as a whole, taking into consideration each provision of the statute on the entire subject.

Wilbourn v. Hobson, 608 So. 2d 1187, 1191 (Miss. 1992) (quoting *McCaffrey's Food Market, Inc. v. Mississippi Milk Comm'n*, 227 So. 2d 459, 463 (Miss.1969).

The doctrine of *in pari materia* specifies that if a statute is ambiguous, 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)). Accordingly, Mississippi's intestate succession statute should be construed *in pari materia* with the adoption statute. In construing statutes *in pari materia*, the legislative intent is derived from the consideration as a whole as the inconsistencies of one statute may be resolved by looking at another statute on the same subject. *Wilbourn*, 608 So. 2d at 1191; *Andrews v. Waste Control, Inc.*, 409 So. 2d 707, 713 (Miss. 1982). In the present case, neither statute contains inconsistencies, but the two statutes should be construed to harmonize with each other. "When different code sections address the same subject matter, these sections are to be construed and interpreted not only so they harmonize with each other but also where they fit into the general and dominant policy of the particular system of which they are a part." *Andrews,* 409 So. 2d at 713 (citing *Ashcraft v. Board of Supervisors of Hinds County*, 204 Miss. 65, 36 So. 2d 820 (1948)).

The general and dominant policy of the adoption statute allowing an adopted child to inherit from his natural parent is that the law allows allowed adopted children to inherit from their natural families in order to protect minor children from losing their birthright without consent or knowledge. *In re Estate of Yount*, 845 So. 2d 724, 727 (Miss. App. 2003). The Legislative intent in allowing adopted children to inherit from their adoptive families is to elevate the adopted child to the <u>same</u> status in law as that of the natural child. *Dodds v. Deposit Guaranty Nat. Bank*, 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 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.

The system under examination here is the proper distribution of the estate under the laws of descent and distribution. Under these facts, the statutes should operate together to protect DeMarcus' right to inherit a sibling's share, either the share his mother would have inherited, or the share of an adopted brother of the full blood, but not both. A different result would produce the incongruent result that DeMarcus' inheritance is greater than any other individual entitled to the rights of an heir under the descent and distribution statute, and would leave open potentially strange results in other cases depending on any number of combinations of deaths and adoptions by family members.

The better analysis here is that upon his adoption DeMarcus was placed in the position of a brother of the full blood, entitled by such relationship to inherit from the estate of his deceased sister, Janice Kaye Jenkins, under the laws of descent and distribution, as a brother. This protects the rights of the adopted child with respect to his adoptive family. It defies logic, however, that the brother of the decedent may also qualify as the descendant of a deceased sister under Section 91-1-3. The statutory rights of the adopted brother, it may be reasoned, have superceded his rights as the descendant of his mother, a deceased sister. The relationships of sibling, and descendant of a sibling, are mutually exclusive.

This Court has previously held that 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). Here, it is not possible to give full, cumulative, effect to each of the principal statutes as such would yield illogical and inequitable results. To find that one individual, here DeMarcus, represents the interests of two separately identified individuals (a sister and a brother) for purposes of inheritance would produce a perplexing result which could lead to potential

manipulation in future cases. *See Kellum v. Johnson*, 115 So. 2d 147 (Miss. 1959). ("Statutes should be constructed so to produce reasonable results and not uncertainty or confusion.") 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).

It is well-settled that statutes should not be interpreted 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).

In *McMillan*, the interplay of various sections of the homestead exemption, judgment lien, and recordation statutes was considered. *Id.* at 357. The sellers of a home had recently suffered a judgment filed against them, but according to Mississippi's law, their homestead property was exempt from such judgment. *Id.* The sellers sold their homestead and moved out sometime during the month before the closing of the sale of the homestead property. *Id.* The closing occurred on July 31, 1998 at which time the conveyance instrument was executed; however, the instrument was not recorded until August 26, 1998. *Id.* at 358. During the intervening period, the creditors filed a motion seeking all property of the debtors to be seized. *Id.* at 357-58. Since the debtors had vacated the homestead, the judgment creditor argued that the homestead exemption no longer applied and therefore, the property was subject to seizure and a subsequent sale. *Id.* The creditors reasoned that since the debtors moved before actually filing the conveyance instrument, the homestead property

had not been disposed of, was no longer the debtors homestead property, and therefore was no longer exempt from the judgment. *Id.*

The Court considered each of the three applicable statutes and practically reasoned that a lien filed before the sale and conveyance of homestead property could not possibly attach to the homestead as such property remained exempt. *Id.* Specifically, the Court found that it was not reasonable for a judgment lien to attach to a homestead property just because the seller vacated the property a few days before executing and delivering the conveyance instrument. *Id.* It is often the case that the seller of a home moves out before the actual closing as once the execution and delivery of the deed occurrs, the homestead property no longer belongs to the owners. *Id.* Therefore, upon execution of the conveyance instrument by the debtors the homestead did not belong to them and there was nothing left to seize. *Id.* Weighing the rights of judgment creditors against those of the purchaser of a residence in light of the three principal statutes, the Court emphasized the necessity for a reasonable and common sense approach. *Id.* at 365. The Court ultimately held that the homestead exemption still exists after the sale of the homestead as long as the homestead owner has not abandoned the old home and made a full-time residence at a new home prior to the date that a deed is executed. *Id.*

Like *McMillan*, the present case requires a common sense approach. One individual should not be allowed to represent two people. Moreover, it is not reasonable for DeMarcus to inherit twice the amount that the natural parents and siblings of Janice Kaye Jenkins would inherit. The general and dominant policy of both the inheritance statute and the adoption statute is to place the adopted child in an equal place as that of the natural heirs, but not in an elevated position to that of the natural heirs.

D. The Law of Other Jurisdictions.

Inasmuch as we have been unable to locate a Mississippi case that directly addresses the issue before the Court, authorities from other states may be helpful in determining the proper resolution of the issue. A possible inheritance in two capacities from one estate, has been considered in several jurisdictions. W.W. Allen, Annotation, *Adoption as Affecting Right of Inheritance through or from Natural Parent or other Natural Kin,* 37 A.L.R. 2d 333 (2007).

1. Jurisdictions that do not allow dual inheritance.

Courts in Indiana, Pennsylvania, Missouri, New Hampshire, and North Carolina have held that one person is not allowed to inherit from another person's estate in dual capacity.

In *Billings v. Head*, 111 N.E. 177 (Ind. 1916), the Supreme Court of Indiana ruled in a case with the same factual context as the instant case, that a child adopted by his natural grandparents was entitled to inherit only one share. Construing the Indiana adoption and inheritance statutes together, the court concluded that it could not have been the legislative intent that an adopted grandchild would ever inherit more of the adoptive parent's estate than would one of the adoptive parent's natural children. *Id.* at 177. "[W]e are constrained to hold that it was not the legislative purpose that an adopted grandchild should ever inherit more of its adopting parent's estate than would one of his natural children."*Id.*

Presented with the same factual context as *Billings* and this case, the Pennsylvania Supreme Court, in *Morgan v. Reel*, 62 A. 253, 256 (P.A. 1905), held that the intent of the Pennsylvania adoption statute was clear that the status of the adopted child should be equal, but not superior to that of other natural children. The child could receive a share in his grandfather's estate as a child by adoption but could not also receive a share through representation of his deceased mother. *Id.* at 257.

In *Grimes v. Grimes*, 178 S.E. 573 (N.C. 1934), the Supreme Court of North Carolina addressed the issue of dual heirship in a different context. In *Grimes*, the court was faced with the issue of whether a child adopted by his natural uncle that predeceased the child's intestate grandfather could inherit from his grandfather by right of representation the share of his natural uncle and from his predeceased natural father, the brother of his natural uncle. Citing a North Carolina statute prohibiting adopted children from inheriting from the adopted parents' collateral kin, the court held that a child adopted by his natural relatives should not be treated any differently than a child that was a "stranger to the blood." *Id.* at 575. The Court held, therefore, that the adopted grandchild inherited no interest in the estate of his intestate grandfather but inherited only his proportionate share of the interest his mother would have inherited had she not predeceased the intestate grandfather. *Id.*

The court in *Young v. Bridges,* 165 A. 272 (N.H. 1933), although not presented with identical facts as those in the instant case, opined that the concept of dual heirship should be rejected and the child should be limited to the adopted inheritance. Recognizing that the adoption statute in question provided that an adoption should make the child "the child of the petitioner to all legal intents and purposes," the court concluded that "a change of status [had occurred] by which in general the relatives [became] strangers in [the] legal aspect and others [have taken] their place." *Id.* at 275.

Finally, in *Burnes v. Burnes*, 132 F. 485, 490 (D. Mo. 1904), a Missouri district court conceded that the effect of the Missouri adoption statue was that an adopted child could inherit from both his adoptive and natural parents. However, the court would not allow such dual inheritance "from one person's estate in the dual capacity of a blood relation and as an adopted child." *Id.*

2. Jurisdictions that have permitted dual inheritance.

Contrary to the rulings detailed above, courts in Colorado, Iowa, Kansas, and Utah have permitted one person to inherit from another person's estate in a dual capacity. The cases in all four of these jurisdictions involved a child that had been adopted by his or her natural grandparents, making the child both an adopted child and a natural grandchild. The courts in these four jurisdictions allowed a child adopted by his or her grandparent to take both as the adopted child of the grandparent and as a grandchild through representation of the deceased natural parent.

In *Wagner v. Varner*, 50 Iowa 532 (1879), the Iowa Supreme Court allowed a child to inherit as both a natural grandchild and as an adopted child. Specifically, the court reasoned that the children should inherit the share that their mother would inherit because the Iowa adoption statute provided that all rights, duties, and relations, including inheritance, should be the same between a child and adoptive parent as that which existed by law between a child and natural parent. *Id.* The court opined that through adoption, the child acquired additional rights, but there was nothing in the Iowa adoption statute or in the decree of adoption which removed existing rights of the children. *Id. See also In re Bartram's Estate*, 198 P. 192 (Kan. 1921).

Like the *Wagner* court, the court in *In re Benner*, 166 P. 2d 257 (Utah 1946), reasoned that the child did not lose the right to inherit from and through his mother because the Utah adoption statute provided, as in Iowa, that the adopted person and adoptive parent should have all rights and be subject to all duties of the legal relation of parent and child. The *Benner* court also relied upon the Utah descent and distribution statute providing that the estate should be inherited by the surviving child of the intestate when the intestate was not survived by a spouse; thus, the adopted child was entitled to take a share as the "issue" and was entitled to take a share as the adopted child. *Id.*

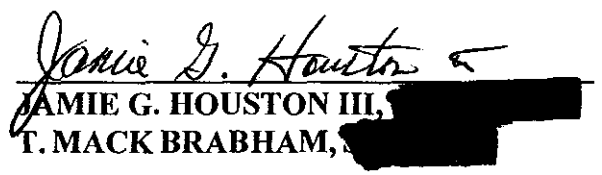
Each of the above cases involved a decedent who was the natural grandparent or natural parent of the heir. Such is not the present case. Here, all of the inheritance comes from DeMarcus' natural aunt. DeMarcus is not a descendent of the decedent either through representation or as a result of his adoption; rather, his relationship to the decedent is that of a collateral heir. Therefore, an inequitable result is produced when the two statutes are construed so to allow DeMarcus to inherit a much greater share than even those heirs who are ascendants of the decedent.

CONCLUSION

Giving full, cumulative effect to each statute produced an inequitable and unreasonable result in the lower court. The statutes should be read together and common-sense reasoning applied. Treating one individual as falling within the classification of two separate individuals (a sister 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. There is nothing in the history of the interpretation of these statutes suggesting that the dominant policy of the inheritance statute or the adoption statute to place the adopted child in an elevated position requiring that child to inherit more of the net estate than would a natural heir.

The issue in the present case appears to be one of first impression in Mississippi. The better approach here is to read the statutes in such a way as to produce a practical, logical, equitable result, not unduly rewarding one heir and unduly penalizing the seven other heirs. Thus, the judgment should be reversed. 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 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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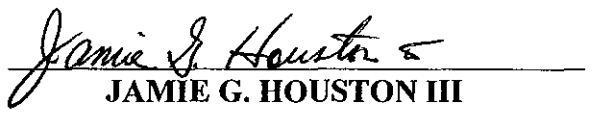

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