OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 85-755

TITLE DELYNDA ANN RICKER BARKER REED, Appellant V. PRINCES ANN RICKER CAMPBELL, INDIVIDUALLY, AND AS ADMINISTRATIX OF THE ESTATE OF PRINCE RUPERT RICKER, DECEASED

PLACE Washington, D. C.

DATE April 30, 1986

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IN THE SUPREME COURT OF THE UNITED STATES

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DELYNDA ANN RICKER BARKER REED, :

Appellant :

V. : No. 85-755

PRINCESS ANN RICKER CAMPBELL, :

INDIVIDUALLY, AND AS ADMINI- :

STRATRIX OF THE ESTATE OF :

PRINCE RUPERT RICKER, DECEASED :

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Washington, D.C.

Wednesday, April 30, 1986

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:06 o'clock a.m.

APPEARANCES:

R. STEPHEN MC NALLY, ESQ., Austin, Texas; on behalf of the Appellant.

PAUL MC COLLUM, ESQ., Odessa, Texas; on behalf of the Appellee.

C O N T E N T S

P R O C E E D I N G S

CHIEF JUSTICE BURGER: Mr. McNally, I think you may proceed whenever you are ready.

ORAL ARGUMENT OF R. STEPHEN MC NALLY, ESQ.,

ON BEHALF OF THE APPELLANT

MR. MC NALLY: Mr. Chief Justice, and may it please the Court:

This is a direct appeal taken from an original probate action in west Texas. The Appellant was denied inheritance rights from her father on the basis that she was an illegitimate child. Three questions are presented: first of all, whether this Court's decision in Trimble v. Gordon is binding authority where the father died before Trimble was decided and suit was filed afterwards in his open estate; second, whether any sufficient state interest supports enforcement of the naked status of bastardy after the father's death; and third, whether the preference of surviving fathers over surviving mothers is substantially related to any sufficient state interest.

The Appellant in this case is Delynda Ann Ricker Barker Reed. The Christian names Delynda Ann were chosen for her natural father, Prince Ricker, whose surname she had until she was adopted about the time she started elementary school, by Jerry Barker. The Reed is

her married name.

The procedural posture of this case is particularly relevant because we are talking about whether the application of a decision of this Court is defeated by that posture. This was from an order entered in open probate on which there were five other children of Prince Ricker and the Appellant. The order excluded the Appellant Delynda from the estate. The probate of that estate is still going on in open administration in the trial court. There has never been an order entered declaring who the heirs are to this day. There has never been an order entered on which any third parties would rely stating who the heirs are.

The probate is still open. The assets have not been vested by a decree.

In this posture, full precedential authority should be given to the case of Trimble v. Gordon because the statute involved in this case is an insurmountable barrier indistinguishable from the insurmountable barrier struck down in Trimble, and because the estate is still open.

QUESTION: What statute is at issue?

MR. MC NALLY: Your Honor, the statute at issue regarding inheritance is the 1956 version of Section 42 of the Texas Probate Code. Section 42 has

been amended twice since Prince Ricker Died. However, under the Texas Constitution, statutes and precedents, it's the statutes which are in effect at the time of his death which determine or under which the passage of title of his estate is determined, and in the case of Lovejoy v. Lillie, the Court looked at this statute, the 1956 version, and struck it down, allowing inheritance to be --

QUESTION: That was the statute that was in effect when Ricker died?

MR. MC NALLY: Yes. It's the same statute that was in -- that passed on in Lovejoy v. Lillie. And the Texas Supreme Court considered thge 1956 statute in Davis v. Jones and admitted that it lacked suitable alternatives to marriage under Trimble. So there have been at least two state court rulings on this particular 1956 statute as applicable to persons -- estates of persons who died before --

QUESTION: And what does Trimble have to do with it?

MR. MC NALLY: Your Honor, Trimble -- in Trimble this Court struck down the Illinois statute because it made marriage a sine qua non for inheritance by an illegitimate child. The 1956 statute allowed inheritance only if there had been a marriage between

the parents. There was no other way that the inheritance is allowed under the 1956 statute for an illegitimate child.

QUESTION: In Texas.

MR. MC NALLY: In Texas, that's correct.

QUESTION: Was no common law suit for paternity or support recognized for illegitimate children?

MR. MC NALLY: Your Honor, there -- under the common law, of course, in Texas, there was no right of support for an illegitimate child. This Court struck down that common law and statute in Gomez v. Perez. After Gomez, there was a judicial remedy for the 14th Amendment right recognizing Gomez to child support for children that had -- however, by that time, Delynda had been adopted, and when she was adopted, her rights were, to any support were cut off by Article 46(a) of the then in effect --

QUESTION: Was the question of the legal effect of her adoption ever raised below?

MR. MC NALLY: Your Honor, there was no legal effect on her inheritance rights of the adoption, and so no, it was never an issue. A legitimate child --

QUESTION: I thought under Texas law adoption severed all legal relationship between the parent and

child.

MR. MC NALLY: Your Honor, under Section 46(a) which was in effect when Delynda was adopted -- that was Article 46(a) of Vernon's Annotated Texas Statutes -- an adoption severs all the rights except the right of the child to inherit from the natural parent.

QUESTION: Except the right of a legitimate child?

MR. MC NALLY: Yes. A legitimate child has that right, and that's why it's no severed. An illegitimate child never has the right, and that's why --

QUESTION: But you didn't challenge that.

MR. MC NALLY: Well, no, Your Honor. Our rights were not -- to inherit were not terminated by the adoption. It's the fact that we never had any rights to inherit before the adoption or after the adoption.

QUESTION: Well, could your client have, ever have brought suit under Chapter 13?

MR. MC NALLY: No, Your Honor. She was excluded from Chapter 13 in at least two ways during the entire time her father was alive. The first way is Chapter 13 gave no relief at all to a child born before its effective date in September of 1975. Delynda was born in 1958, so right there she was totally excluded from Chapter 13. Moreover, this Court had Chapter 13

before it in Mills, noted the one year statute is not sufficient, but Delynda didn't even have a technical right under that one year statute because she was over one year old when it was enacted.

When they amended it to four years, she was over four years old. She never had a chance there. And she was over twenty years old when they made the most recent amendment to twenty years. It's just kept moving away.

QUESTION: She missed out on them.

MR. MC NALLY: But the effect is you've had an insurmountable barrier in the statute of limitations the whole time, as well as the insurmountable barrier in the effective date of the statute.

Under that provision as construed by the Constitution, it gave a valuable right of legitimation to certain illegitimate children, those that were born late and those that brought suit within the statute of limitations as extended. Those children had a -- as a matter of right had the right to an order designating them to be the father of the child -- the child's -- that the father was the father upon a jury finding, under -- and that was under 13.08 of the Family Code. They had, that's the court shall enter that order. And under 13.09, .09 of the Family Code, the effect of the

order is that the child is the child of the father as though born to the parents within lawful matrimony. It was a full legitimation.

Also, the Family Code gave the right to attorneys fees to a child born late enough who brought suit soon enough, and that's a valuable due process right because the state imposes on illegitimate children a requirement of proving paternity, does not impose the same requirement on a legitimate child. The legitimate child just shows motherhood and marriage, never has to show access, chastity of the mother, that sort of thing. So there's a heavier burden to prove on the illegitimate child.

The Texas statute gave some relief for bearing that burden in the form of attorney's fees, but only to certain children, those born after September 1, 1975, those who had a chance to bring the action within the statute of limitations as extended. Delynda never had any chance to bring an action under the Family Code. It has been an insurmountable barrier to her the entire time.

QUESTION: So what was the decision below?

MR. MC NALLY: The lower court denied inheritance rights and said that also a reasonable basis supported excluding Delynda from the 1979 Probate Code

which, of course, incorporated the Family Code. As far as Trimble goes, it applied a time of filing test. Under this test, Trimble is not binding authority if the father was born -- died before Trimble and the suit was first file afterwards. The time of filing test is not sensitive to whether or not the estate was open, and therefore, for example, if the child brought suit before Trimble and the father died earlier, it would reopen by collateral attack the estate.

QUESTION: So she was barred by the 1956 statute which was deemed to be in effect and valid prior to Trimble.

MR. MC NALLY: Yes, and enforce -- and enforceable after Trimble by the time of filing test as a way of saying, well, Trimble is not binding authority. That is not a good test, Your Honor. There are two better forms of retro -- well, three, really. This Court has historically used three forms of retroactivity analysis, a Blackstonian, all decisions were automatically retroactive. Then, since about 1965 or so in the civil area you have had the Chevron test, which was a three-part test. And recently in the criminal area the Court has addressed --

QUESTION: So Ricker died before Trimble.

MR. MC NALLY: Died about four months before

Trimble.

QUESTION: But the claim was made after Trimble.

MR. MC NALLY: The claim was made I guess about a year after Trimble.

QUESTION: And the court said this statute will still be deemed valid for this purpose.

MR. MC NALLY: Well, it conceded --

QUESTION: Well, it --

MR. MC NALLY: The statute's invalid.

QUESTION: It nevertheless barred --

MR. MC NALLY: But they're going to apply it.

QUESTION: Well, they're going to apply it. They think it's valid enough to exclude this person from inheriting.

MR. MC NALLY: Well, they applied it to exclude this person from inheriting but effectively conceded that it is repugnant to the 14th Amendment under Trimble. They just said, well, Trimble isn't the law, wasn't the law when he died, and although it is now the law as we are trying the case and as the case is on appeal, we're just not going to apply Trimble. We're going to act like Trimble never happened, and what we're going to apply is really nothing, no form of equal protection analysis at all.

Before Trimble was decided, this Court had repeatedly, had never sustained since Levy v. Louisiana, this Court had never sustained an insurmountable barrier based on illegitimate status, and if they didn't want to apply Trimble, they should have applied Gomez v. Perez which said that the insurmountable state of barrier based on illegitimacy violates the 14th Amendment. The lower court refused to apply any form of equal protection analysis.

QUESTION: Mr. McNally, if you prevail here, you want of course inheritance rights.

Do you want something more than that? Do you want support money for the period prior to death?

MR. MC NALLY: Your Honor, we are seeking no support at this point. We dismissed the support claim prior to trial by determining that under state law, even a legitimate child would have had no rights to support. We just didn't think we could get it as an adopted child. We considered that our rights to support were terminated by the adoption.

So we're not seeking any --

QUESTION: So it's only the inheritance that you want.

MR. MC NALLY: We're seeking inheritance but also the status of legitimation which is given to

certain illegitimate children by Chapter 13. Chapter 13 of the Family Code doesn't itself give any support. It's just a legitimation statute. That legitimation is -- gives a right to a status.

QUESTION: Well, what federal claim is there to that?

MR. MC NALLY: Your Honor, the federal claim is that here you have a denial of a right to legitimate social status, legitimate legal status, and to the attorneys fees, and that those are, we would submit, substantial rights apart from --

QUESTION: Well, they may be, but are they federal constitutional rights?

MR. MC NALLY: Your Honor, if the state hadn't given certain other illegitimate children the right to legitimation and attorneys fees, equal protection would not take any cognizance of it. But the state has come in with a statute and given certain other illegitimate children, based on their date of birth, based on their at least having a chance to file the claim, these valuable rights to be -- to escape from the stigma of illegitimacy, and since the state has taken that step, the 14th Amendment looks at that to see if the exclusions pass the Mills test. Mills requires that exclusions from a grant of rights must first of all give

a reasonable opportunity for those excluded to be availed of the rights. It's illegitimate children.

And Delynda never had any opportunity. So the first element of the Mills test is not satisfied. And secondly, it requires a substantial relationship to a permissible state interest, and here it is significant that we are looking for the status of legitimacy as far as the Family Code goes. We are not necessarily asking, we're not asking under the Family Code for inheritance, we're not asking for support. We're just asking to be legitimate.

All of there state interests that the Court has recognized in denying relief have had to do with the need to have settled title to real estate or avoid stale or fraudulent claims. Those stated interests are not involved here. We're just asking for the social, the legal status of legitimacy.

QUESTION: Well, you're asking for inheritance.

MR. MC NALLY: Well, that is -- yes, Your Honor. However, that is not under the Family Code.

QUESTION: Right.

MR. MC NALLY: Under the Family Code -- yes, we're asking for inheritance by looking at the probate statutes in effect when Prince Ricker died, the

insurmountable barrier, and the analysis that Trimble should be applied.

This Court has used, in recent times, since 1965, discussed retroactivity in two contexts. The civil retroactivity has been governed by Chevron v. Huson, and I would like to point out that under Chevron the purpose of Trimble is germane. The second of the Chevron elements is whether the purpose of Trimble v. Gordon would be served or hindered by being applied in an open estate. Trimble has two purposes. The first purpose is the fairness interest, the fairness -- the interest of the child and of the state itself to recognizing fair claims, and the other interest is preserving security of title to land and orderly probate.

Here we have an open state. We are going -- the only way to recognize the fairness interest is to allow inheritance, and that can be done in this case because the estate is open, without jeopardizing orderly probate and without jeopardizing security of title to land.

The most recent analysis that this Court has applied in the Fourth and Fifth Amendment context also looks carefully to whether the estate is open or close, and the Court has said in U.S. v. Johnson that a new

decision, constitutional decision, should be applied unless it works a sharp break with the past, in cases pending on direct appeal.

This case is pending on direct appeal, and it doesn't work any sharp break with the past. Insurmountable barrier analysis was not created in Trimble. It was there long before Trimble so that Trimble did not apply any new analysis. Under the U.S. v. Johnson, Trimble should also be given retroactive application in an open estate.

The dissent in U.S. v. Johnson was very concerned about whether the purpose of the exclusionary rule was served by retroactive application. That concern was not present in this case because the purpose of Trimble is served, both purposes of Trimble are served by application in this estate and are defeated by -- would be defeated by a refusal to apply Trimble in this case.

QUESTION: How old is your client now?

MR. MC NALLY: My client is now about 28 years old, Your Honor. She has two children of her own.

QUESTION: What's the size of the estate?

MR. MC NALLY: Your Honor, we don't know exactly. We were excluded from the estate. It involves a fraction of the minerals under a portion of an

original ranch that was about I think 2,800 acres. I believe that this is a one-sixth share of the minerals under one-fourth of the original ranch. I have received different reports as to the amount that Delynda's share would be. I understand that her brothers and sisters are currently receiving somewhere between $2,500 a month and I have heard as high as $4,000 a month. I really don't know.

With regard to the discrimination based on sex, some of the analysis set out by this Court in Mills is relevant that is after Gomez. Both the parents have the duty to support the child. Even after Gomez, the father has one way to escape that. He may never be adjudicated the father, and in that case, he still will be, for example, immune from prosecution for nonsupport.

But if he is adjudicated to be the father, he still -- there is still a preference that benefits him over a surviving mother. Under Section 109 of the Probate Code, a surviving parent is automatically the guardian of the child's person and property. The mother would be the guardian, the father would be the guardian, but if the mother is the guardian, the child has no estate that could help her to raise the child. If she is needy, she has no assets there in the estate because

the child could not inherit from the father, whereas if it is the mother that dies, because the statutes have come in and modified the common law, the child can inherit from the mother, there is some estate of the child, the father would have some recourse to help him raise the child if he is in a needy circumstance.

Thus, a father is preferred over a mother, and that is inherent in the Texas statutes.

QUESTION: Well, what point in your argument is that observation direction?

MR. MC NALLY: That is directed to the sex discrimination portion of the denial of inheritance, that it is -- if Delynda was one of the ones whose mother died without a will, she would be allowed to inherit.

QUESTION: And is this argument an alternative ground to Trimble v. Gordon's retroactivity?

MR. MC NALLY: Exactly. In effect, the analysis of the lower court is that we just don't look at equal protection if Trimble is retroactive. This is an example of an equal protection ground where there is no retroactivity question because it hasn't been decided yet by the Court.

QUESTION: But Delynda -- this isn't a claim of Delynda, it's a claim of her mother, as I understand

it, who apparently is alive and perfectly capable of making the claim if she wants to.

MR. MC NALLY: Your Honor, it's a claim for mothers of children in Delynda's classification who are foreseeably impacted by --

QUESTION: Well, why shouldn't we wait for mothers to make that claim?

MR. MC NALLY: Of course, that would be a clearer and stronger case if you did. The standing -- I believe Delynda does have standing to make the argument, a jus tertii standing under Craig v. Boren because it is Delynda's own rights that are affected. The mother's are only affected derivatively. It's Delynda's rights which are affected directly.

QUESTION: Mr. McNally, can I ask in this connection, as I understand your response to Justice Rehnquist, if you should prevail on the retroactivity, as we call it, of Trimble argument, then there's no need to reach this argument, is that correct?

MR. MC NALLY: That's exactly correct, Your Honor.

QUESTION: Is that also true with respect to your argument seeking legitimate -- legitimation? As I understood the lower court opinion, that was discussed only in connection with the basic claim of right to a

share of the estate.

Are you asking independently that even if you win and get your share of the estate under the Trimble retroactivity point, you still want separate consideration of the legitimation issue?

MR. MC NALLY: Yes, Your Honor. We are requesting that the Court separately consider -- we would not -- we would be very pleased to inherit under Trimble --

QUESTION: And what is your -- well, but doesn't that -- confining it to that second question, what is your -- your theory is that this cutoff date of September whatever the year was, that denied your client equal protection, is that what it is, because it allowed some illegitimate children to have the statutory remedy and others not, is that it?

MR. MC NALLY: Yes.

QUESTION: So the discrimination is between some illegitimates and other illegitimates.

MR. MC NALLY: Yes.

QUESTION: So is it a statute of limitations issue then?

MR. MC NALLY: Well, there is the statute limitations, although it is not really statute of limitations since they gave a one year statute after she

was one year old, and these are non-tolling statute.

QUESTION: But may I just finish one thought on that question?

I thought the answer of the lower court in part was that even under the statute, if the date had not been there, your client would not have qualified under the facts of this case.

Didn't they so -- that the father hadn't been -- there are two or three ways a person could be legitimated, but none of them applied to this particular person?

Am I wrong in that?

MR. MC NALLY: Your Honor, in effect that was the alternative ruling that -- and they were looking, they were saying, well, if you apply the 1979 statute, then we think that there was a reasonable basis to exclude you from the Family Code so you don't inherit under the 1979 statute. That was not necessarily a factual thing. They were saying that as a matter of law, there's a reasonable state basis, so that the Family Code --

QUESTION: So there are really two objections to her legitimation claim. One is the date and the ithger is the statutory conditions.

MR. MC NALLY: Yes. Now, the third basis that

the lower court may have been concerned with is whether the legitimation action is available after death because that, we did first bring this action, of course, after Prince Ricker was dead, and the lower -- the Texas courts have never ruled that it's not available after the father dies.

What we would say to this Court is that the Court doesn't need to know whether the state courts will construe it that way or not to know that Delynda is entitled to the relief because if they construe it that way, it's clearly a violation of the 14th Amendment.

QUESTION: Does she have any interest in obtaining this relief other than the interest in her representation interest? Is that the only thing at stake, really?

MR. MC NALLY: Your Honor, the attorneys fees are also a valuable right, and they are both important. The attorneys fees are afforded under 13.42(b) of the Family Code.

QUESTION: I see.

QUESTION: We -- our cases of this -- it seems to me some of them have said that attorneys fees by themselves don't indicate a sufficient real interest in the case. It's like costs, in a way, the fact that costs may be outstanding doesn't keep a case alive.

MR. MC NALLY: Your Honor, the position of the attorneys fees in this -- I would agree that certainly the attorneys fees request is much less compelling than the fact that we also have the status of bastardy at stake, but turning to the attorneys fees, you have an exceptionally sensitive area because they touch on both due process and equal protection laws, essentially equal protection and access to due process because the state imposes the requirement of proven paternity only on an illegitimate child. A legitimate child has the benefit of a presumption, after showing maternity and marriage, they don't have to prove paternity. Only the illegitimate child has to prove that

So the state has imposed a burdeon on the illegitimate child. Then it has come in and given some illegitimate children some help with that burden, a right to an aware of attorneys fees but not to others, and so we are in the sensitive area of equal protection, again, with due process --

QUESTION: Well, why is equal protection and due process more "sensitive" than other constitutional areas?

MR. MC NALLY: Your Honor, those are fundamental constitutional rights.

QUESTION: More fundamental than other

constitutional rights?

MR. MC NALLY: Well, more fundamental than just a right to money as attorneys fees which you were saying there were some cases the Court has held that insufficient.

QUESTION: Well, but the source of your claim of right is one thing. What you're actually claiming, is it enough to make it a concrete interest I think is another.

MR. MC NALLY: Are you asking if the request to be legitimated is a concrete interest or are you still solely on the attorneys fees?

QUESTION: I think there might be a question as to either one, whether the request to be legitimate is a sufficiently concrete interest, and whether a claim for attorneys fees based on that right is the sort of claim for monetary relief that would give you standing if noting else in your case did.

MR. MC NALLY: It would depend on how fundamental the Court had judged the right to be legitimated and the right to attorneys fees in that context, equivalent statutory rights. If the Court feels that those are not significant or constitutionally significant or cognizable rights, then certainly it wouldn't be compelled, but you know, you wouldn't be

compelled to strike down the statute. However, I would urge the Court that the status of illegitimacy is a heavy burden, there is still stigma attached to it. There have been studies that show that the IQ of illegitimate children is lower and gets progressively lower through the years.

There is still a stigma, I will represent to the Court, felt by my client very keenly in that denomination by the state courts.

I would like to reserve the rest of my time.

CHIEF JUSTICE BURGER: Mr. McCollum?

ORAL ARGUMENT OF PAUL MC COLLUM, ESQ.

ON BEHALF OF APPELLEES

MR. MC COLLUM: Mr. Justice, and may it please the Court:

This case essentially involves but one issue. From the record it established below, the question is whether a substantial federal question exists, and we submit that it does not. We would further urge that the Appellant is ill-placed in this Court. This case does not involve, as he would claim, complex issues of trans-states impairments of equal protection that impact upon numerous persons, nor does the case involve the concept of retroactivity, which is a complex concept that usually implicates a notion not here, which is

fundamentality.

The only issue in the case is substantiality. It is true that the substantiality does, under the present facts, have two parts. One is standing, and more importantly, whether or not the Texas legislature, in its response to Trimble and as in achieving the goals as articulated by Lalli, came up with a good law.

Now, then, I think that in view of what is said, that an examination of the chronology might be in order here.

Now, what happened was that in 1959, Section 42(b) of the Texas Probate Code was enacted. Under Section 42(b) of the Probate Code there was only one way that paternal inheritance could be achieved, and tht was through intermarriage of the parties.

In 1975, Chapter 13 of the Family Code was enacted, and that provided for establishment of paternity for purposes of child support.

QUESTION: Could this Appellant have ever sued under Chapter 13 at any point?

MR. MC COLLUM: Yes, Your Honor, she could have sued under --

QUESTION: When, when could she have done that?

MR. MC COLLUM: She could have sued under

Chapter 13 at any time after 1979. In 1979 the Texas law was, under judicial interpretation, that all persons who were born prior to the year 1975 had a four-year statute of limitations to go on, plus the statute was tolled during the minority. In effect, she had 22 years in order to bring it.

Now, in actual fact, she had more than 22 years. In actual fact, she brought a suit alleging in 1978 that she was the heir and also she petitioned the District Court for child support.

Now, then, those cases were later consolidated for purposes of trial. Now, she remained in court, surrounded by lawyers, from 1978 until the case was tried in 1982, some four years later.

Now, Trimble came down April 26, 1977, and in response to Trimble, the Texas legislature one month later enlarged Trimble and they stated, and they amended Section 42(b) to provide not only for intermarriage as it held before, but also through voluntary legitimation by the father.

Now, also in 1979 the Texas Legislature again reacted in response to Trimble and proscriptions in Lalli, and the Texas Legislature in '79 said that not only could they be born or conceived during marriage or in a null marriage that later claimed, turned into a

valid marriage, but also a voluntary statement of paternity would legitimate the child and entitle it to paternity -- paternal inheritance, but also they said a third method. They said they adopted Chapter 13.01 as a procedure, as a third procedure to establish paternal inheritance.

Now, Chapter 13.01 provides for scientific methods to determine the paternity of a father.

QUESTION: Is that part of the Family Code?

MR. MC COLLUM: Yes, sir, it --

QUESTION: 13.01?

MR. MC COLLUM: Yes, sir, it's 13.01 of the Family Code, Your Honor. And that portion of the Family Code was made a part of Section 42(b) of the Probate Code for purposes of establishing a third procedure.

Now, under that, also, the Probate Code had the general four-year statute of limitations and it also had the statute tolled during the minority of an applicant.

Now, what this Appellant did in this case, she filed these two actions some 14 months after the death of Prince Ricker. They remained in court all of that time until it was finally tried.

Now, it was tried on the thrust of intermarriage under Section 42 of the Probate Code.

They submitted issues to the jury to determine whether or not the parents were married as it was claimed. The jury found that they were not married.

Then they stated that there was a putative marriage. They submitted elements to establish that. The jury found that there was no putative marriage.

Then they submitted a nonissue. They submitted an issue that said was she, do you the jury find that she is the daughter of Prince Ricker, and the jury said yes. You see, that is a nonissue. That was ignored by the trial court because that is not the way you determine paternity. There are three ways that you can do it, and the scientific way they did not do.

Now, I think it's important to know and to know that the record below showed that Prince Ricker was an unreconstructed alcoholic with associated mental diseases, and he was --

QUESTION: But the fact is that the jury -- the judge submitted the issue to the jury, I take it.

MR. MC COLLUM: Yes, sir.

QUESTION: And why did he, if it wasn't an issue in the case, why did he?

MR. MC COLLUM: They insisted on it. They wanted to do it. It's a nonissue. It had nothing to do with the lawsuit.

QUESTION: Well, the jury found, the jury found parenthecd.

MR. MC COLLUM: It would be -- it has no mcre bearing if she's a complete stranger. This is not the way, there is no way in Texas law that this is a way to do it.

Now, there was on the books a way for them to dc it. There was --

QUESTION: Mr. McCcllum --

MR. MC COLLUM: He was hospitalized some 16 times in the last several years of his life before his death.

QUESTION: Mr. McCcllum.

MR. MC COLLUM: Yes, sir.

QUESTION: Is it not true, though, that if you had prevailed cn that factual issue and the jury had found otherwise, then there would be no claim whatscever here under Trimble v. Gordon retroactivity or anything else? So it at least was an issue, a threshcld issue that kept her in court to get up here.

MR. MC COLLUM: That's what they ccntend, Judge.

QUESTION: Ycu wouldn't deny, wculd you, that had the jury finding been the other way ycu'd be a lot better off.

MR. MC COLLUM: I honestly, Your Honor, don't think it makes any difference. It makes not one whit of difference. I think probably they would not have pursued the appeal had the jury so found, but with reference to that finding --

QUESTION: But insofar as they make their Trimble v. Gordon argument, doesn't it make a difference on that? It's at least theoretically possible that they will convince us -- I'm not saying they will -- that the Trimble v. Gordon was the law as applied to any estates that hadn't been closed at that time. That's one of the things they argue.

MR. MC COLLUM: Yes, Your Honor. Texas, in response -- I hope I understand Your Honor's question -- Texas in response to Trimble v. Gordon made two amendments to 42(b) to try to come into compliance.

QUESTION: But they did that after this man died.

MR. MC COLLUM: Yes, sir.

QUESTION: So that if, if her rights vested at the time of his death -- and I don't say they did or they didn't, but if they did, as he argues, and if Trimble v. Gordon only cuts off claims when the estates are closed, then this is a rather important finding.

MR. MC COLLUM: Yes, sir.

QUESTION: And I don't suppose that after this jury finding that she could have started over again in another court and claimed paternity.

MR. MC COLLUM: I don't think she could have after 1980, Your Honor.

QUESTION: Well --

MR. MC COLLUM: She could have up through November of 1980.

QUESTION: All right, here's a jury, here's a determination in a court that she was not the child of this man.

Do you think she could have started over and had it tried out again?

MR. MC COLLUM: Yes, Your Honor. She could have pursued the law as it existed.

Now, the law provides three ways of establishing paternity, one of which is not to ask the jury do you find that she's the daughter of Prince Ricker. That issue was ignored by everybody.

Now, counsel was there, counsel had read Section 42(b). It did not vest. In other words, can you say that Texas in trying to come in agreement with Trimble, that a person can sit there and not take advantage of the law that Texas passed --

QUESTION: Well, counsel, why -- isn't it true

that the 1956 law was applied in this case?

MR. MC COLLUM: No, sir, that's the law they chose to go under. That's what they wanted to go under.

QUESTION: Well, she didn't succeed in -- she hasn't succeeded -- she's been barred from being an heir of Ricker.

MR. MC COLLUM: She failed -- she did not submit any evidence, Your Honor, of blood tests. She did not try to come in -- in other words, Texas provided a method that she could have been declared an heir of Prince Ricker, a paternal heir of Prince Ricker if she could have prevailed in the proof. Now, all in the world she had to do, as per the appellate court in Texas, Reed v. Campbell, said all in the world she had to do --

QUESTION: Was take some blood tests of a dead man, I guess.

MR. MC COLLUM: Well, yes, sir, take the blood test of a dead man or samples of his tissue. We don't know whether it would have been possible, but on the other hand, we do know that she never tried, and all in the world they have got to do is try to comply with the law, and that's why the legislature enacted these. They are reasonable efforts to bar spurious claims and to secure accuracy in titles and accuracies in

inheritance. There is nothing invidious or discriminatory about them.

The law was in place for her to establish if she could her paternal inheritance. She did not even make an effort to do so. All in the world she chose to do was to say am I the child of Prince Ricker, which was a nonissue in the case.

Now, we would submit that we don't know what Texas could have done to come into compliance with Trimble other than what she did. Now, would Texas, would the statute, would Section 42(b) as it existed in 1955 have been in violation of Trimble? It was more liberal than the Illinois statute which required not only intermarriage but also a formal acknowledgement of the child. Texas tried every way in the world to come into compliance with those statutes.

Now, then, are we to say that while in court in 1982 with the case already on file since 1978, with her lawyers and not make an effort to comply with the law, and say, well, the statute has run on me, or I don't like the law, I don't think the legislature was proper in requiring these scientific tests. Are we to do that?

I would respectfully urge the Court that there is a complete lack of substantiality in the lawsuit.

We do not find in the lawsuit anything that says that the Texas laws should not be applicable to this case. Texas laws are presumed to take effect at the time that they are enacted, and these did, and one month after Trimble and two years after Trimble again, both while she was in court and able to take full advantage of them.

We would respectfully urge, Your Honor, that in this case the appeal should be dismissed.

Thank you.

CHIEF JUSTICE BURGER: Do you have anything further, Mr. McNally?

You have two minutes remaining.

ORAL ARGUMENT OF R. STEPHEN MC NALLY, ESQ.

ON BEHALF OF APPELLANT -- Rebuttal

MR. MC NALLY: Thank you, Your Honor.

First, does the Court have any other questions? I do have one or two things I will mention if you don't.

Your Honor, the Winn action, which recognized the invalidity of the date of birth provision, has never been applied in Texas to recognize anything other than the right of child support. It was not the equivalent, it has never given the equivalent relief available under the Family Code action, it has never given legitimation,

it has never given attorneys fees. The Winn action was available until Delynda was 22, or a Winn action is available until the child is 22. Delynda filed this action before she was 22, so if this is a Winn action in Probate, which would be a Trimble action, we're within it.

The Court had before it in Mills all three methods which the Appellees now claim were sufficient reasons for denying inheritance. Mills rejected voluntary child support by the father as a sufficient means for child support. It rejected the one-year statute which gave the claimant in Mills a much better chance to get child support than we have had to be legitimated in ths case, and in Mills it rejected marriage, which is the third of the methods.

These are -- these methods have already been considered by the Court and rejected as not constitutionally sufficient.

QUESTION: Well, when for the first time in Texas could you -- could an illegitimate inherit other than by the marriage of their parents?

When was it first possible? Was that the -- in '75, I take it, you could prove paternity and get support, but that was not heirship.

MR. MC NALLY: That's correct.

QUESTION: So when was the first time, '78?

MR. MC NALLY: Your Honor, I would think that the first time that Texas allowed it would be in 1977 because the voluntary legitimation for support purposes was enacted right after Gomez in '73.

Technically if the father had agreed and gone in and sworn that that was his child in '73, and then died after, right after 1977, that would have been the earliest.

QUESTION: But if that hadn't happened, there was no way that she could establish heirship other than --

MR. MC NALLY: Other than that, the first probate significance for the Chapter 13 paternity suit was in 1979. If your father didn't die after August 27, 1979, there was no way that that would help you.

QUESTION: Mr. McNally, was this estate in probate at the time Trimble was decided?

MR. MC NALLY: Your Honor, yes, the estate had already been filed. It was pending on file from January of 1977, so it had been on file for some months. Delynda's claim for inheritance was not filed until after Trimble, but there was an application on file stating that the other heirs were the heirs of the estatek when Trimble came down.

QUESTION: So you, you think the operative reason for the denial of heirship in this case was the '56 statute which was still in existence?

MR. MC NALLY: That's correct, Your Honor, and that's clear from the opinion also. It says even if the 1979 statute applied, that the Family Code was reasonable. But the opinion makes it clear it's the 1956 statute that it was talking about.

CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

(Whereupon, at 11:54 o'clock a.m., the case in the above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#85-755 - DELYNDA ANN RICKER BARKER REED, Appellant V. PRINCES ANN RICKER CAMPBELL, INDIVIDUALLY, AND AS ADMINISTRATRIX OF THE ESTATE OF PRINCE RUPERT RICKER, DECEASED

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Paul A. Richardson

(REPORTER)