

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00001 COA**

**LAUREN NICOLE DARLING, BY AND THROUGH
HER MOTHER AND NEXT FRIEND DINA
DARLING** **APPELLANTS**

v.

**IN THE MATTER OF THE ESTATE OF JOHN
ELMER KEENUM, III, DECEASED AND IN THE
MATTER OF THE ESTATE OF JULIE ANN
KEENUM, DECEASED** **APPELLEES**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	12/08/95
TRIAL JUDGE:	HON. PERCY LEE LYNCHARD JR.
COURT FROM WHICH APPEALED:	DESOTO COUNTY CHANCERY COURT
ATTORNEYS FOR APPELLANTS:	JACK R. JONES SUSAN M. BREWER
ATTORNEYS FOR APPELLEES:	DANA J. SWAN H. RANDOLPH GARNER
NATURE OF THE CASE:	CIVIL - WILLS, TRUSTS AND ESTATES
TRIAL COURT DISPOSITION:	CHANCELLOR GRANTED ESTATES' MOTION TO DISMISS LAUREN DARLING'S CLAIM TO BE AN HEIR OF JOHN E. KEENUM, III.
DISPOSITION:	AFFIRMED - 1/27/98
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/27/98

BEFORE THOMAS, P.J., HERRING, AND HINKEBEIN, JJ.

HINKEBEIN, J., FOR THE COURT:

Lauren Nicole Darling [hereinafter Darling] appeals an order of the Desoto County Chancery Court dismissing her claim to be recognized as an heir of John Elmer Keenum, III and therefore entitled to a portion of his and his sister's estates. The chancery court held that Darling's claim was barred because she failed to file a paternity action within the time limitations specified by Mississippi law. Aggrieved by the chancery court's ruling, Darling asserts the following assignments of error:

I. MISSISSIPPI CODE ANNOTATED SECTION 91-1-15 (AS AMENDED) IS UNCONSTITUTIONAL IN THAT IT DENIES A MINOR ILLEGITIMATE CHILD FUNDAMENTAL RIGHTS OF DUE PROCESS.

II. MISSISSIPPI CODE ANNOTATED SECTION 91-1-15 (AS AMENDED) IS UNCONSTITUTIONAL IN THAT IT DENIES A MINOR ILLEGITIMATE CHILD EQUAL PROTECTION UNDER THE LAW.

FACTS

In September of 1991 John Elmer Keenum, III and his twin sister Julie Ann Keenum [hereinafter estates] were murdered. The murders were allegedly perpetrated by their father, who subsequently committed suicide. The estates were intestate. Letters of administration were issued in February of 1992 wherein David Clay Vanderburg [hereinafter Vanderburg] was appointed administrator of the estates. In addition to seeking a distribution of the estates' assets, the heirs also brought wrongful death actions against the estate of the alleged murderer. By the ninth of September 1992, Vandenberg had completed the process of publishing notice to creditors of the estates. Approximately one year later, on November 2, 1993, an attorney for Darling wrote a letter to one of the estates' attorneys in which he asserted that Darling was the illegitimate daughter of John E. Keenum, III and thereby entitled to a portion of the estates and also a portion of any wrongful death recovery that might be obtained. A copy of this letter was forwarded to Vanderburg. Darling took no further legal action on her claim until after the estates filed petitions for determination of heirs, nearly two years later.

In September of 1995 Vanderburg filed petitions for determination of heirs of the estates. In these petitions Vanderburg joined Darling "as a possible heir of the decedent in this proceeding." Darling answered both petitions on November 20, 1995. In her answers Darling asserted that any defense to her claim to be an heir of the estates "by way of statute of limitations is null and void in that said statute is unconstitutional and denies the illegitimate child, Nicole Darling, due process and equal protection under the laws of the United States and the State of Mississippi." On that same day the estates filed motions to strike and dismiss Darling's answers. The estates asserted that Darling, as an illegitimate child, had failed to prosecute a paternity action within the time required by Mississippi statute and that contrary to Darling's claim, such statute was not a violation of either the constitutions of Mississippi or the United States. The estates' position was that Darling was not an heir and therefore not entitled to any portion of the estates or any wrongful death recovery that might be obtained. The chancery court granted the estates' motions, holding that "pursuant to the appropriate

statutes as aforesaid, the claim of the minor child in this cause, Lauren Nicole Darling, is effectively barred as not [having been timely filed]." The chancery court rejected Darling's argument that Section 91-1-15 (3) (c) of the Mississippi Code was an unconstitutional violation of her rights to due process and equal protection under the constitutions of Mississippi and the United States. It is from this decision of the chancery court that the instant appeal is taken.

ANALYSIS

I. MISSISSIPPI CODE ANNOTATED SECTION 91-1-15 (AS AMENDED) IS UNCONSTITUTIONAL IN THAT IT DENIES A MINOR ILLEGITIMATE CHILD FUNDAMENTAL RIGHTS OF DUE PROCESS

For an illegitimate child to inherit from a deceased parent via intestate succession or under Mississippi's wrongful death statute, the illegitimate must prove his relation to the decedent under one of the avenues provided by Section 91-1-15 of the Mississippi Code. The portion of Section 91-1-15 pertinent to the facts at bar provides that:

[a]n illegitimate shall inherit from and through the illegitimate's natural father and his kindred . . . according to the statutes of descent and distribution if . . . [t]here has been an adjudication of paternity after the death of the intestate, based upon clear and convincing evidence, in an heirship proceeding under sections 91-1-27 and 91-1-29. However, no such claim of inheritance shall be recognized unless the action seeking an adjudication of paternity is filed within one (1) year after the death of the intestate or within ninety (90) days after the first publication of notice to creditors to present their claims, whichever is less; and such time period shall run notwithstanding the minority of a child.

Miss. Code Ann. § 91-1-15 (3) (c) (Rev. 1994). Under the facts at bar it is undisputed that an action pursuant to Section 91-1-15 (3) (c) was the only avenue available for Darling to prove that she was the illegitimate daughter of John Elmer Keenum, III and, therefore, entitled to a portion of his and his sister's estates. It is also undisputed that Darling never instituted a paternity action, either before or after the expiration of the time limits prescribed by Section 91-1-15 (3) (c). Furthermore, there is no evidence giving any indication that Vanderburg, the attorney appointed by the chancery court to administer the estate, knew or should have known of the existence of Darling prior to the letter of November 2, 1993. At the time Vandenberg learned of Darling's existence and her claim to be an heir the deadlines under Section 91-1-15 (3) (c) for establishing paternity had expired many months earlier.

Darling's sole argument before the trial court and on this appeal is that Section 91-1-15 (3) (c) is unconstitutional because the time limits it imposes worked to deny her due process and equal protection under the law, as guaranteed by the constitutions of Mississippi and the United States. With this assignment of error Darling addresses the due process component of her argument. Although Darling's argument is quite vague, apparently she is contending that she was entitled to actual notice of all proceedings in this estate matter and that anything less than actual notice of the same was a denial of her due process rights.

Darling directs this Court's attention to several United States Supreme Court decisions which define

when actual notice must be given to interested parties so as to satisfy the due process requirements of the United States constitution. Darling also cites several Mississippi cases concerning fact patterns where the estate administrator or executor knew of the existence of an illegitimate child of the decedent, yet failed to bring this fact to the chancery court's attention. Darling directs this Court to no authority addressing the due process requirements of the Mississippi Constitution. Most importantly, none of the cases (state or federal) cited by Darling lend support to her argument that the time limitations contained in Section 91-1-15 (3) (c) of the Mississippi Code work to deny her due process of law. On the contrary, the cases she does cite lend support to the estates' position that the time limitations imposed by Section 91-1-15 (3) (c) are not an infringement upon her due process rights.

The federal case Darling cites is *Tulsa Professional Collection Services, Inc. v. Pope* and the cases it relied upon. In *Pope* the United States Supreme Court held that due process requires actual notice be given to "known or reasonably ascertainable creditors of an estate." ***Tulsa Prof'l Collection Serv., Inc. v. Pope*, 485 U.S. 478, 491 (1988)**. *Pope* also cited an earlier case holding that actual notice must be given to interested parties where their name and address is reasonably ascertainable. ***Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983)**. Neither of these cases involved claims by illegitimate children whose existence was unknown to the administrator or executor of an estate. Additionally, neither of these cases stand for the proposition that actual notice must be given to unknown persons who might have an interest in the pending litigation.

The Mississippi cases cited by Darling concern fact patterns where the administrator or executor knew of an illegitimate child of the decedent, yet failed to notify the chancery court of this fact. Such cases are not applicable to the facts at bar because, as detailed previously, Vandenberg had no knowledge of Darling's existence until after the time limitations of Section 91-1-15 (3) (c) had expired. Furthermore, Vandenberg did not conceal Darling's existence from the circuit court, as he joined her in the petition for determination of heirs of the estates. Although Darling includes these cases in her brief on appeal, she does not go so far as to contend that Vandenberg knew of her existence and withheld such information from the chancery court. Were she to make such argument, for the first time on appeal, we would reject it as procedurally barred. ***See CIG Contractors, Inc. v. Miss. State Bldg. Comm'n*, 510 So. 2d 510, 514 (Miss. 1987)** (holding that party may not argue theory on appeal that was not argued at trial).

Because all of the authority cited by Darling is either contrary to her position or simply not relevant to the facts at bar, we are left with nothing to support Darling's argument other than her conclusory statement that "[t]o deny a [six]-year-old child her inheritance without any actual notice whatsoever would be an unduly harsh result and would fly in the face of the due process provisions of the [s]tate and [f]ederal [c]onstitutions." This is not sufficient to satisfy the burden of persuasion that Darling bears on appeal. ***See Sumerall v. Miss. Power Co.*, 693 So. 2d 359, 368 (Miss. 1997)**. It is therefore the opinion of this Court that the provisions of Section 91-1-15 (3) (c), placing limitations upon the time in which illegitimate children may prove their right to inherit from an intestate decedent, do not deprive illegitimates of due process of law as guaranteed by the constitutions of Mississippi and the United States. Accordingly, we reject this assignment of error as being without merit.

II. MISSISSIPPI CODE ANNOTATED SECTION 91-1-15 (AS AMENDED) IS UNCONSTITUTIONAL IN THAT IT DENIES A MINOR ILLEGITIMATE CHILD

EQUAL PROTECTION UNDER THE LAW.

With this assignment of error Darling claims that Section 91-1-15 (3) (c) of the Mississippi Code is unconstitutional because it deprives illegitimate children of their right to equal protection under the law. In resolving this issue we are fortunate to have our supreme court's decision in the case of *Larsen v. Kimble (In re Estate of Kimble)*, 447 So. 2d 1278 (Miss. 1984), which we hold to be dispositive as to our resolution of this assignment of error. In *Kimble* our supreme court discussed the constitutionality of Section 91-1-15. *Kimble*, 477 So. 2d at 1283. In detailing the history of this statute, the court noted that Section 91-1-15 was rewritten by our legislature in 1981 in response to the United States Supreme Court's holding in *Trimble v. Gordon*, 430 U.S. 762 (1977). *Id.* Our supreme court observed that the 1981 amendments to Section 91-1-15 modified the statutes so as to allow illegitimate children to inherit from and through the illegitimate's natural father under certain circumstances. *Id.* One of the avenues provided by the statute is when an adjudication of paternity is made within one year after the death of the intestate or within ninety days after the first notice to creditors, whichever was less. **Miss. Code Ann. § 91-1-15 (3) (c)**. This, of course, is the portion of the statute that Darling argues is unconstitutional on both due process and equal protection grounds.

In *Kimble* our supreme court observed that Section 91-1-15 was again amended in 1983 to clarify the legislative intent behind the 1981 revisions. *Kimble*, 477 So. 2d at 1283. After discussing the impact of *Trimble* on Mississippi law of intestate succession and its treatment of illegitimate children, our supreme court concluded that "we believe that the amendment in 1981 and in 1983 will effectively afford the illegitimates equal protection of the law" *Id.* The court's holding in *Kimble* has not been overruled or questioned by the court in the years since the decision was rendered. Because our supreme court has clearly held that Section 91-1-15 (3) (c) is not a violation of illegitimates' equal protection rights, not only is this assignment of error without merit, it is directly contrary to controlling precedent.

**THE JUDGMENT OF THE DESOTO COUNTY CHANCERY COURT IS AFFIRMED.
COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLANTS.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING, KING,
PAYNE, AND SOUTHWICK, JJ., CONCUR.**