



Inheritance Tax Treatment

The daughter of a long-time fiancé is not entitled to preferential inheritance tax treatment as a stepchild under a Nebraska Supreme Court case decided on April 13.

In *In re Estate of Hasterlik*, 299 Neb. 603, 909 N.W.2d 641 (2018), Kimberlee Voss appealed the county court's decision that she failed to prove that her late mother's fiancé of nearly 30 years stood in the acknowledged relation of a parent to her. She pointed to visits to Nebraska when her mother and the decedent, Hasterlik, lived in Wisconsin and holidays spent together. Her mother and the decedent provided money to Voss "at times" and bought her son a car when he graduated from high school. After her mother died, Voss and her family continued to spend holidays with Hasterlik and would see him about once a week. They also helped with grocery shopping and home maintenance.

Voss' affidavit indicated that Hasterlik was protective of her and would give her "fatherly advice and guidance." He referred to her as his stepdaughter. She attached a previous will that disinherited his biological daughter in favor of Voss' mother and, if Voss' mother predeceased him, to Voss.

The county court concluded that it was unable to differentiate that Hasterlik provided anything to Voss or acted in a manner that was above and beyond the normal circumstances of his companionship with Voss' mother. As such, it determined that Voss did not qualify for the inheritance tax rate assessed to immediate family and lineal descendants (Class I beneficiaries).

Voss appealed, claiming that she was a person "to whom the deceased for not less than ten years prior to death stood in the acknowledged relation of a parent" under Neb.Rev.Stat. 77-2004. She sought the Class I beneficiary tax exemption of \$40,000 and tax rate of one percent on the excess.

Statutes exempting property from inheritance tax are strictly construed and the taxpayer carries the burden of showing that he or she clearly falls within the statutory exemption. The Supreme Court applied the following seven-factor test to determine the acknowledged relationship of a parent under 77-2004 (*citations omitted*).

- (1) reception of the child into the home and treatment of the child as a member of the family, (2) assumption of the responsibility for support beyond occasional gifts and financial aid, (3) exercise of parental authority and discipline, (4) relationship by blood or marriage, (5) advice and guidance to the child, (6) sharing of time and affection, and (7) existence of written documentation evincing the decedent's intent to act as parent.

The evidence offered at trial was sparse and some of the seven factors were not addressed. Although Voss described the relationship between Voss' mother and the decedent as "a close marital type relationship", Nebraska statutes do not provide for common law marriage. No written documentation of intent was provided except a copy of the previous will, not his most recent will, and there was nothing in the record to show that Voss received the same treatment under both versions.

The county court concluded that Voss and the decedent cared for each other and would spend time together at holidays and regular visits. However, the evidence was insufficient to establish that Voss went above and beyond the normal circumstances with Voss' mother. The Supreme Court affirmed the order of the county court.

As a result of the decision, Voss was taxed as a Class III beneficiary having no familial relationship to the decedent. After a \$10,000 exemption is applied, the balance is taxed at 18 percent.

The full text of the case is available [here](#).

Editor's Note: Legal Line is a feature that will periodically appear in NACO E-Line. This article has been prepared by Beth Ferrell of the NACO legal staff. Legal Line is not intended to serve as legal advice. Rather, it is published to alert readers to court decisions and legal or advisory matters important to county government. For a specific opinion on how the information contained in this article or that which will be discussed in future issues relates to your county, consult your county attorney or personal counsel.