

NOTICE

Decision filed 07/30/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 140509-U

NO. 5-14-0509

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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<i>In re</i> ESTATE OF WAYNE NETTLES,	)	Appeal from the
Deceased	)	Circuit Court of
	)	Bond County.
(Karen Nettles, Appellant).	)	
	)	No. 14-P-28
	)	
	)	Honorable
	)	Ronald R. Slemmer,
	)	Judge, presiding.

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JUSTICE MOORE delivered the judgment of the court.  
Presiding Justice Cates and Justice Schwarm concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court's finding that Melissa Nettles-Crum is the daughter of the decedent was not against the manifest weight of the evidence, where required elements were satisfied under section 2-2 of the Probate Act (755 ILCS 5/2-2 (West 2014)).

¶ 2 The petitioner, Karen Nettles, appeals the September 15, 2014, order of the circuit court of Bond County that found Melissa Nettles-Crum to be the daughter of the decedent, Wayne Nettles. For the following reasons, we affirm.

¶ 3 **FACTS**

¶ 4 On July 14, 2014, Karen Nettles filed in the circuit court, *inter alia*, a petition for letters of administration over the estate of Wayne Nettles, who died intestate. Karen

requested that letters issue to Larry Harnetiaux. On July 16, 2014, Melissa Nettles-Crum filed an affidavit of heirship, alleging that both she and Karen are the daughters and heirs of Wayne Nettles. Melissa attached her birth certificate to the affidavit, which names Wayne Nettles as her father. On July 24, 2014, Melissa filed a counterpetition, requesting that letters of administration be issued to her, pursuant to section 9-3(c) of the Probate Act of 1975 (Probate Act) (755 ILCS 5/9-3(c) (West 2014)), which provides that children of a decedent are entitled to preference in the issuance of letters of administration. The petition alleged that Wayne's wishes were for Melissa to act as the administrator of his estate.

¶ 5 On August 27, 2014, a hearing was held on the petitions. At the outset, Melissa's birth certificate was admitted into evidence by stipulation, as was the divorce decree of Melissa's mother, Pearl Bolton, and Robert Bolton. The parties stipulated to the following facts. Melissa's mother was once married to Robert Bolton, and their divorce decree was entered on March 11, 1971. Five days later on March 16, 1971, Melissa was born. On June 13, 1971, Melissa's mother married Wayne Nettles. Melissa's mother passed away on August 27, 1994, and Wayne Nettles passed away on July 11, 2014. The parties further stipulated that Wayne Nettles was previously married to Louisa Wildey in 1942. Their daughter, Karen Nettles, was born on June 13, 1948. Wayne and Louisa divorced on December 16, 1966.

¶ 6 Melissa testified that her father was Wayne Nettles, he was her father during her entire life, and she never knew anyone else as her father. Melissa indicated that she had no doubt that Wayne was her father and there were never any questions in that regard.

Melissa further testified that she and Karen Nettles had always regarded each other as siblings and lived together as such until Karen moved out of state when Melissa was four years old. Melissa had no contact with Karen after that point until Melissa was in high school, at which time Karen started visiting Wayne Nettles. Melissa testified that she herself had visited Wayne once or twice per week until he became ill in January 2014, at which point she assumed medical power of attorney over him and cared for him throughout his illness and until his death.

¶ 7 On September 15, 2014, the circuit court entered an order, finding, *inter alia*, clear and convincing evidence that Melissa is the daughter of Wayne Nettles, pursuant to section 2-2 of the Probate Act (755 ILCS 5/2-2 (West 2014)) and section 5 of the Illinois Parentage Act of 1984 (Parentage Act) (750 ILCS 45/5 (West 2014)). Karen filed a timely notice of appeal.

¶ 8 ANALYSIS

¶ 9 The sole issue on appeal is whether the circuit court erred by finding Melissa to be the daughter of Wayne Nettles. Karen argues that the Parentage Act applies to this case to establish a presumption that Robert Bolton—not Wayne Nettles—is Melissa's natural father. We review *de novo* issues of statutory construction. See *Sage Information Services v. Suhr*, 2014 IL App (2d) 130708, ¶ 7. This case was filed as an action in probate. Accordingly, the Probate Act applies to determine whether Melissa is the lawful child of Wayne Nettles. We acknowledge the circuit court's reference to not only the Probate Act, but also the Parentage Act in reaching its determination that Melissa is the daughter of Wayne Nettles. However, we can affirm the circuit court's decision on any

basis in the record. See *Alpha School Bus Co. v. Wagner*, 391 Ill. App. 3d 722, 734 (2009).

¶ 10 We review the question of whether a person is the lawful child of a decedent, pursuant to section 2-2 of the Probate Act (755 ILCS 5/2-2 (West 2014)), under a manifest weight of the evidence standard. See *Brice v. Estate of White*, 344 Ill. App. 3d 995, 1000 (2003). "A finding is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Southwest Bank of St. Louis v. Pouloukefalos*, 401 Ill. App. 3d 884, 890 (2010). " 'A trial court's judgment following a bench trial will be upheld if there is any evidence supporting it.' " *Id.* (quoting *Nokomis Quarry Co. v. Dietl*, 333 Ill. App. 3d 480, 484 (2002)).

¶ 11 The applicable provision of the Probate Act relative to the determination of whether Melissa is the daughter of Wayne Nettles is section 2-2(h), which provides that "[a] person who was a child born out of wedlock whose parents intermarry and who is acknowledged by the father as the father's child is a lawful child of the father." 755 ILCS 5/2-2(h) (West 2014).

¶ 12 In the case at bar, the parties stipulated at the hearing that Melissa was born out of wedlock, five days after the divorce decree of her mother and Robert Bolton was entered. Melissa's birth certificate naming Wayne Nettles as the father was admitted into evidence without objection. Wayne Nettles married Melissa's mother when Melissa was three months old. Melissa testified that Wayne Nettles acknowledged her as his child, that he was always known as her father, and that there was never any question that he was her

father. She testified further that she and Karen regarded each other as sisters for many years. Melissa's testimony was unrebutted and Karen's counsel conceded at oral argument that there was no contrary evidence presented at the hearing. Accordingly, we cannot say that the circuit court's determination that Melissa is the daughter of Wayne Nettles was against the manifest weight of the evidence.

¶ 13

#### CONCLUSION

¶ 14 For the foregoing reasons, we affirm the September 15, 2014, order of the circuit court of Bond County that found Melissa Nettles-Crum to be the daughter of Wayne Nettles.

¶ 15 Affirmed.