ORAL ARGUMENT - 11/30/95
95-0744
LITTLE V. SMITH

WOLFE: May it please the court. I am Joe Wolfe from Sherman. This is a suit for determination of heirship, and for damages based on an illegitimate child's exclusion from an estate. The plaintiff is claiming to inherit through her alleged natural mother.

This case involves reconstruction of events...

GONZALEZ: Is there any dispute...you say alleged mother. Isn't there in dispute that it has been established...

WOLFE: We have agreed for summary judgment purpose yes your honor. The case involves reconstruction of events spanning a period of approximately 60 years. How might the modern sound _____ or media headlines summarize all these events? It might be "Illegitimate child, age 59, seeks share of estate 8 years after estate is closed." A subheadline might be "Claimant had no contact with so-called birth family for over 57 years." I believe the fundamental issue in this lawsuit is whether an illegitimate child can maintain a suit for damages against the executor and distributees of an estate based upon the plaintiff's exclusion from the estate when the suit isn't filed for nearly 8 years after the estate has been closed.

When this lawsuit was filed in 1991, the plaintiff...

BAKER: Are you arguing that you don't recognize a cause of action, or is your argument on the latter part of your statement that it's barred?

WOLFE: It's barred. That's our argument your honor. When this lawsuit was filed in 1991, the plaintiff Katherine Smith was 59 years old. She had attained her majority in 1952. Her alleged birth mother, Thelma Little, had been dead for 22 years. Her alleged natural grandmother, Lula Little, had been dead for 9 years. The estate in question The Lula Little Estate had been closed for nearly 8 years. When this lawsuit was filed in 1991, the only remaining member, the only surviving member of the Little family with firsthand knowledge of whether or not Thelma had given birth to an illegitimate child in 1932 was her brother, Dr. Frank Little. Dr. Little died in 1993, less than 2 years after the lawsuit was filed. And so he is no longer able to defend her sister or himself.

GONZALEZ: He did give a deposition?

WOLFE: Yes, he did.

OWEN: You've cited in your brief authorities from Texas and a US SC authority. Have

other states had occasion to deal with any of these issues?

WOLFE: If so your honor I haven't conducted research into that. I think the main authority that we've relied on is Reed v. Campbell, and then the Turner case that was fairly recently decided by the Austin CA. And those were our two chief authorities. The evidence in the case shows that even though Mrs. Smith knew from age 10 that she was adopted she made no serious inquiry into the identity of her natural parents until 1989 when she was 57 years old. She was asked during her deposition why she had made no inquiry until 1989, and she testified that she had been frightened to try. There is no reasonable explanation in the record as to why Mrs. Smith did not obtain Thelma's name from her adopted mother prior to her adoptive mother's death in 1982.

PHILLIPS: When are you contending that this cause of action which you concede exist arose?

WOLFE: December 30, 1983, which was the date that Dr. Little filed an affidavit closing the Lula Little Estate.

PHILLIPS: So if the estate had never closed this cause of action would still be open today, or forever?

WOLFE: That is conceivable. I think we place heavy reliance your honor on the fact that the estate was fully distributed and closed as of December 31, 1983. The plaintiff sued Dr. Little individually and as executor and some 15 other defendants claiming to be entitled to a share of the Lula Little Estate, and claiming damages based on her exclusion.

GONZALEZ: What's the value of the estate?

WOLFE: We estimated that her 1/12th share in the estate was approximately $33,000 your honor. The defendants filed a motion for summary judgment on the grounds of limitations and public policy. The trial court granted the motion. The CA affirmed with respect to the claim of heirship, but reversed and remanded on the damages portion of the suit on the grounds that there is a fact question as to when limitations accrue.

The logical result we say of the CA decision is that 20, 30 or 50 years or more after an estate has been distributed and closed an adopted person can file suit for damages and obtain a jury trial based on a claimed exclusion from a share of the estate. This is so because under the CA's decision if an adopted person files suit within 2 or 4 years after he discovers the names of his natural parents there would almost certainly be a fact question as to when limitations accrue. The effect of the CA's decision is that there can be no finality to distribution of estates. Because the distributees and the personal representatives remain vulnerable indefinitely to causes of action based on exclusion from distribution of an adopted person, or an illegitimate child.

PHILLIPS: Why does that keep the estate from being final?

WOLFE: Because it makes no sense from our point of view your honor that the heirship claim is barred, but the plaintiff can still sue the distributees and the executor for damages. It makes no difference we believe as a practical matter that she is barred from asserting her claim of heirship if she still has a claim for damages.

SPECTOR: Are the damages alleged the share of the estate that she would have received?

WOLFE: Well it's based on her exclusion. This is a problem that I have with the CA's decision. As we have stated in our application that it is very difficult to resolve how she can sue for damages based on being excluded as an heir when she no longer has a claim to be an heir of the estate. I know of no other foundation for damages other than her exclusion from the estate. And the CA said that that's barred.

I would like to quickly review some significant facts contained in the summary judgment record which I believe can be summarized most favorably to the plaintiff as follows:

> As mentioned she claims to have been born as the illegitimate daughter of Thelma Little in Sherman in 1932. Thelma was 18 years old in 1932. The plaintiff was received in Hope Cottage in Dallas the day following her birth. She never had any contact with her birth mother after she was born. She never had any contact with any member of the Little family for the next 57 years until 1989.

During the intervening years between 1932 and 1989, the following significant events occurred:

> In 1933, the plaintiff was adopted from Hope Cottage by Mr. and Mrs. Barber of Paris, Texas. In that same year Thelma married Sterling Park; and there were two children born of that marriage. By the time the plaintiff was 10 in 1942, her adoptive mother Mrs. Barber had told her that she had been born in Sherman on March 22, 1932, that she had been adopted from Hope Cottage in Dallas, and that her natural parents resided in Sherman. In that same year 1942 there was filed an affidavit with the Texas Dept. of Health signed by one Emily Jones stating that the plaintiff had been born to Thelma Little in Sherman in 1932. In 1952 the plaintiff got married, and there were 2 children of that marriage. In 1960 Thelma's mother Lula Little signed a will leaving all of her property equally to her 5 children, including Thelma. In 1969 Thelma died at age 55, survived by the two children born of her marriage to Sterling Hart. In 1982, Thelma's mother, Lula Little, died with the will that she had signed in 1960. There was no provision in the will stating what would happen to Thelma's share if Thelma predeceased her mother. Lula Little's will was admitted to probate in 1982 and Dr. Little was appointed

independent executor. Under the anti-lapse statute Thelma's share was distributed to the 2 children who were born of her marriage to Sterling Park.

SPECTOR: Had the claim been timely made and there was that clause in the will that would perhaps have entitled her to a share of the estate, but if the will had certain beneficiaries who are named and alive would an illegitimate adoptive child have any right to the estate?

WOLFE: I believe not.

SPECTOR: It's only because of the way the...

WOLFE: The way the will was worded and it was never rewritten after 1960 - 22 years later - Lula Little died. And as I mentioned the anti-lapse statute applied.

Also in 1982 the plaintiffs' adoptive mother died. As I mentioned on December 31, 1993, Dr. Little filed the affidavit closing the Lula Little estate. Other than random talks with her adoptive mother, the plaintiff made no inquiry into the identity of her natural parents until 1989.

CORNYN: Why wouldn't she be put on notice or duty of inquiry at some point after she was told that she was adoptive?

WOLFE: That's our point your honor. We say that she was.

PHILLIPS: But you say that duty didn't start running for legal purposes till Dec. 1983?

WOLFE: We say that she should have had that information prior to that date. If she had exercised reasonable care and diligence to inform herself of Thelma's name, then she could have timely presented a claim or timely made her identity known and participated if it were determined at that time that she was in fact the illegitimate daughter of Thelma.

GONZALEZ: It is very difficult for a 10 year old to know where to start in making reasonable inquiries and protecting her legal rights. Limitations cannot run against a minor.

WOLFE: She obtained her majority in 1952. And we believe at that time that as an adult she would have been presumed to know the law that she was entitled to inherit from and through her natural parents.

GONZALEZ: You're claiming that at best she had 2 years after she became 18, she became an adult and the limitations barred any claims she may have had after age 20?

WOLFE: No your honor. We are saying that after she reached her majority then she had ample opportunity to inform herself of the identity of her natural parents. And that that was an ongoing opportunity that existed all the way up to the time that she actually did make an inquiry. The reason this is important is because of the discovery rule. And we feel that it is inherent in the discovery rule that she must have made a reasonable inquiry, that she must have used reasonable care and diligence to inform herself.

HECHT: Why should the discovery rule apply at all?

WOLFE: I think that's an excellent question your honor because I don't believe the information was inherently undiscovered. We say that the information was readily discoverable as shown by what happened in 1989.

HECHT: So your position is not simply that she cannot establish its applicability in this case but that it doesn't even apply?

WOLFE: Yes sir.

OWEN: Why do you choose Dec. 31, 1983 as the date the cause of action accrued as opposed to some earlier date, such as the date a publication in the newspaper saying that if you have a claim against the estate you need to come forward. Why do you pick a later date?

WOLFE: I can't explain other than we felt that that was a very clear date that the estate was closed, and that an affidavit was filed stating to whom the estate had been distributed and that the estate was closed at that time.

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RESPONDENT

NORTHRUP: May it please the court. My name is Mike Northrup and I represent the respondent, Katherine Smith, and she's also a cross-petitioner in this court. If Frank Little had filed an application for determination of heirship pursuant to the Texas Probate Code §§48 - 56, I would not be standing before this court today. It is our position that when there is a missing or lost heir that is entitled to recover a portion of an estate, that those provisions impose a duty upon the executor or administrator of an estate to have an ad litem appointed by the court. The ad litem is then required to exercise due diligence to try to locate that missing or unknown heir.

SPECTOR: When there is a will that has been admitted to probate?

NORTHRUP: Yes. And in the event that there is a lost or unknown heir to the estate that is entitled to take.

SPECTOR: I don't understand the duty that you allege is owed by the family of the decedent to an unknown or missing.

NORTHRUP I will be happy to address that. While the question of duty was not really addressed in this motion for summary judgment, it is our position and the underpinnings for our cause of action is that the probate code places a duty on the executor to have an ad litem appointed pursuant to these provisions to locate Katherine Smith in this particular instance. The reason that the other heir...

SPECTOR: In every instance where a will is admitted to probate it's your contention that...

NORTHRUP: No, not in every instance. Only when there is an heir that the executor knows is entitled to a portion of that estate and they don't know where the heir is. In this particular instance it is our position that Frank Little knew that Katherine Smith was one of those heirs and that she was entitled to take a portion of this estate through the anti-lapse statute because Lula Little's daughter, Thelma, had predeceased her.

GONZALEZ: What evidence is there that he knew?

NORTHRUP: There is evidence in the record from my client who testified at her deposition that she had contacted one of the members of the family, Betty Sue Labrund or Betty Sue Little, and that Betty Sue basically informed her that yeah we knew about you, that Lula Little basically told us on your death bed that there is another daughter for Thelma. That's the evidence that we have that she knew.

HECHT: Dr. Little denied that he knew.

NORTHRUP: Dr. Little did in fact deny that he knew.

HECHT: And now he's dead.

NORTHRUP: That's exactly right.

HECHT: And one of the reasons for limitations is to keep from having to try cases when the witnesses are gone.

NORTHRUP: I understand that.

HECHT: Why shouldn't it apply in a case like this?

NORTHRUP: It should not apply in this case for the reasons that were set out by Justice Enoch in the recent opinion of Computer Associates v. Alti(?), that this is an inherently undiscoverable injury to my client. The discovery rules should apply to this particular case for that reason. The CA found that it

was inherently undiscoverable because my client is adopted and because all of her birth records were sealed. And the only way you can get them under statute is you have to show good cause. The courts in Texas or at least in Dallas have considered medical reasons to be good cause for getting those birth records.

I'm not sure that's what Justice Enoch had in mind in Computer Associates v. Alti(?) when he said that there has to be objective physical evidence and that it has to be inherently undiscoverable. I think what he had in mind in that case or from what I read from the case is that it has to be looked at from the perspective of the particular cause of action: Is it a cause of action for breach of fiduciary duty? is it a cause of action for fraud? And in that opinion he acknowledged what all other discovery rule type opinions have held and that is that if there is a fiduciary relationship, and there is in this case because Dr. Frank Little as executor of the estate had a fiduciary relationship to the beneficiaries of the Lula Little Estate, that the inherent undiscoverability prong of the test is established.

HECHT: If Mrs. Little had died in 1940 and the plaintiff in this case still had not found out until 1989 - the same result?

NORTHRUP: The same result. And I think it's a justified result in this case because the duty in this case assuming that Dr. Frank Little did know, and that's something on a retrial we will have to establish in order to recover, but assuming that he knew and the other heirs knew that Katherine Smith was an heir or was out there and was entitled to take, it's appropriate to place the duty on the parties that are most likely to know that she was an heir. She didn't know who her family was. In fact the records that would have told her that were sealed. And only if she could establish good cause could she have ever found that out.

SPECTOR: What do you think Dr. Little should have done?

NORTHRUP: I believe what he should have done was to go to the court under the application for determination of heirship, apply to have an ad litem appointed by the court, and then the ad litem is supposed to exercise due diligence to try to locate this individual. If the ad litem exercises due diligence and returns to the court and says: I've looked, I can't find the heir, then Dr. Frank Little's duty is satisfied.

GONZALEZ: What does the ad litem do? Where does he start?

NORTHRUP: He can start by interviewing the members of the family to determine what they know.

GONZALEZ: And ask them: Did your mother have an illegitimate daughter that we don't know about?

NORTHRUP: Yes. That's what gives rights to the reason for the appointment in the first place

is the family in the event that they know...

OWEN: What if they dispute that there is a child? In that situation what is the obligation?

NORTHRUP: That's a good question. I have to reiterate that that's not really a question that was presented by the motion for summary judgment, the question of duty. But I will attempt to answer it to the best I can. I think that in the event that there is a question that even in that instance there is an obligation to go out and look. From talking with some probate lawyers about this it was their impression that even if there is a question, "Is there a lost or unknown heir," that the obligation is to be absolutely certain that you've got it covered. And this doesn't arise...I don't know how often this even arises. It arose in this case only by virtue of the anti-lapse statute. We had a will in this particular instance that disposed of all of the property except it was unforseen or at least the will wasn't changed after Thelma Little passed away. And the Texas anti-lapse statute says that that particular property should go to the issue of Thelma Little and Katherine Smith my client was one of those issue, which the records that are attached to our brief is Appendix C shows, I guess it's her birth records or the records from Hope Cottage showing who all the members of the family are.

ENOCH: When a matter is filed for probate is there some sort of public notice when ...

NORTHRUP: I believe there was. And in fact in this particular instance there was a newspaper publication or a notice published in the newspaper.

ENOCH: So if I know that I'm an heir, and I am not included in the heirship proceedings when its filed, I could never urge the discovery rule because as a matter of constructive notice I got it?

NORTHRUP: That's exactly true.

ENOCH: So really your point is, not that you weren't charged with notice of the heirship proceedings, your point is that you just didn't know which of all of these notices of heirship proceedings that are out there you happen to be in the relative of?

NORTHRUP: That's exactly right. And that's a good point because one of these I did when I got this was try to determine what is the duty of an adoptive child upon learning that he or she is adopted. And I'm not sure that this court wants to suggest that adoptive children have a duty to go out and find out who their natural parents are.

ENOCH: Has the discovery rule ever applied under factual circumstances where I know that I've been injured, but since I have not been able to identify who it is that injured me, I am not under any sort of obligation to do anything until...

NORTHRUP: I disagree with that. I think the discovery rule that as soon as you know you've

been injured you do have an obligation to go out and find and determine who injured you and uncover the facts on that.

ENOCH: So if she had known who it was that had failed to include her in the heirship...you have just said that if you know you are injured, then the reason the statute of limitations applies is once you discover the injury then you've got a period of time when you go out and find out who it is that harmed you. This seems to be a little bit kind of a funny area because the constructive notice is to the world that this heirship proceeding is going on. So everybody in the world now knows that if I'm not included in that I am subject to harm and so now I've got a duty to go look and investigate to find out the identity. Why wouldn't the person who knows they are adopted...

NORTHRUP: She doesn't know that she's been excluded from a will. In this particular instance she doesn't even know that there is a will out there. For all we know the will could have disinherited her biological mother or her biological mother may not have had predeceased her biological grandmother. So she doesn't know that there's an injury just from that notice.

SPECTOR: Of course she may know that a natural parent has died without a will?

NORTHRUP: She may very well know that. That isn't supported by the evidence in this particular case.

SPECTOR: I mean any child would know that their parent might not still be living?

NORTHRUP: That is a possibility. I suspect that in light of the legislature's enactment protecting adoption records and providing when those adoption records may be unsealed, that this court would not want to adopt a rule that would require all adoptive children to be put on notice and go out and try to determine does my biological parent have they disinherited me or not.

PHILLIPS: Did your client's child's illness start a limitations period running? As I understand it it's your position that she needed some good cause to uncover these adoption records, that was provided by the need to have medical history, which was sparked by an actual serious illness in her family?

NORTHRUP: That's correct.

PHILLIPS: So if the child had gotten sick 20 years ago, would her obligation to have uncovered her natural family have arisen at that date so that there was...

NORTHRUP: No, I don't think she had an obligation at all. I don't think adoptive children have any obligation.

PHILLIPS: So the fact her child got sick gave a window, it didn't start anything?

NORTHRUP: Factually that's just what started her down the road to finding out.

PHILLIPS: She could have done all of this in 20 more years and there would be no limitations problems from your...

NORTHRUP: That's exactly correct. And I think this case is a lot like a case that this court writ refused some many years ago. It's Murphy v. Hunnicut which is cited in our brief. That case involves a declaratory judgment action. It was an action that was brought to construe a will 13 years after the will had been admitted to probate. And the question there was did the will provide for a life estate of a particular piece of property or did the will provide for fee simple transfer of that property to the individual in question? Limitations was raised and the question was: Does the discovery rule apply to that particular instance? And what happened is the Texarkana CA held that the time did not even begin running on that for purposes of the declaratory judgment action until there became an actual controversy. There was no controversy until 13 years later when...

HECHT: But when an estate is closed and you don't get anything isn't there a controversy?

NORTHRUP: I agree. With respect to most of these causes of action that's true. And I agree with Mr. Wolfe. December 31, 1983 under ordinary circumstances would be the instance when this cause of action would have accrued absent application of the discovery rule.

CORNYN: The duty that you say an executor owes under the probate code to have an ad litem appointed or seek the appointment of an ad litem by the probate court to identify lost or unknown heirs if in fact they don't locate the heir, the duty's been discharged and your client would have no cause of action?

NORTHRUP: Yes it has. Absolutely.

CORNYN: How different is the diligence that must be exercised by the ad litem under those circumstances from the diligence we ordinarily require of a litigant under the discovery rule to discover a cause of action that might exist?

NORTHRUP: How does that differ, is that the question?

CORNYN: Yes. The diligence that is required of an ad litem to locate a lost or unknown heir, how is that different from the diligence we ordinarily require under the discovery rule of a litigant to identify a cause of action they may have?

NORTHRUP: I'm not quiet sure how to answer your question because I think they reflect 2 different duties and it's hard to say that they are the same or that they differ. I think with respect to the diligence that a litigant is required to exercise to uncover his or her cause of action that duty doesn't even come into play until the litigant has some facts to put him or her on notice.

CORNYN: The fact that I learned that I had been adopted in providing for the tolling of any limitations period during minority status why isn't an adoptive child put on notice they may have a claim...

NORTHRUP: Because this is not a claim for wrongful adoption. This is a claim for the wrongful exclusion from an estate that didn't even occur at the time that she found out that she was adopted.

CORNYN: Why aren't they charged with notice that they may have a claim at some point and be...

NORTHRUP: I will be honest with you. I have done a search of all 50 states and I have been unable to find a case that places a duty on an adoptive child to find out who his or her biological parents are upon learning that he or she is an adoptive child.

ENOCH: The statute says an adoptive child can inherit from the natural parent. Just from a public policy discussion, what would be wrong with putting the burden on the adoptive child to seek out the identity of their adoptive parents if they intend to...I guess I should say what is wrong with putting the burden on an adoptive child when they become an adult to make a reasonable inquiry to discover their natural parents if they intend at some point in the future to assert an interest in an estate?

NORTHRUP: I will answer that in 2 ways.

ENOCH: Here didn't Ms. Little read an obituary or something and learn for the first time that there was money in this estate and what are the facts in this case?

NORTHRUP: I don't think that's in the record at all. I think the first time she learned there was an estate was after she confronted Frank Little and he denied that she could exist or that she was who she said she was.

ENOCH: When you're talking about adoption the adoptive child may want to learn about his or her parents. An adoptive child may not want to know anything about his or her parents. The natural parents may want to know about their child, they may not want to know about the child. They may not even want their identity known. Why shouldn't we leave that the option with the adoptive child and say: adoptive child when you become an adult if you want to locate your parents you must exercise reasonable diligence to do so and not really pay so much attention to estates that get closed or don't get closed?

NORTHRUP: I agree with that sentiment 100% and I think if this court imposes some sort of a limitation period and ultimately a duty on the child to find out if there is an inheritance out there, then it's going to require a lot of those adoptive children to come forward. I think that process should be left alone and should be placed upon the parties most likely to know if there is somebody out there and for the parties who already have the duty to locate those...

ENOCH: Let's talk about the circumstances here. If the burden is on the adoptive child to seek out the parents, then why wouldn't the statute of limitations run against an adoptive child just like any other heir when the estate gets closed in that period of time? In other words the burden would not be on the adoptive child to begin at age 21, and you've got 2 years of discovery, because no harm has happened. Until the estate is closed there is no harm. But the notice to an adoptive child when the estate is filed is identical to a notice to anyone else who knows who their heirs are, and for an adoptive child to then attack the closing of the estate they must show that during that period of the estate, while the whole estate is opened, while everybody's on notice, they exercise reasonable diligence to discover their identity. Why can't that be a rule here?

NORTHRUP: I will answer that in 2 ways. I think first of all the publication of the notice in the paper is probably not proper notice constitutionally under Malane v. Central Hanover Trust, which involves a case of beneficiaries of a trust who were to be given notice by virtue of publication. But secondly, I think the reason that you would not want to require that the limitations run at that point in time is for the reason that the legislature sealed those adoption records and requires good cause. And not every adoptive child may be able to satisfy the good cause requirement. In this particular case it was fortunate that my client that good cause arose in 1987 when there were medical reasons for her to look into that. But the legislature sealed those records for a reason.

ENOCH: _____ good cause the statute that permits an adoptive child to inherit from a natural parent would not be good cause to learn to confirm the identity of _____?

NORTHRUP: I can't answer that. I don't know whether the courts would consider that that constitutes good cause or not.

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REBUTTAL

PHILLIPS: What if her adoptive parents had never told her that she was adopted?

WOLFE: I think the individual would have to have some basic information that they were adopted. I had not given that any thought your honor.

PHILLIPS: Would that be a situation where the discovery rule might apply?

WOLFE: It could be your honor.

PHILLIPS: But if you're told at age 10 that you're adopted, then that changes the whole scenario?

WOLFE: Yes sir.

SPECTOR: Was there summary judgment proof that Dr. Little knew there was another child?

WOLFE: No ma'am the summary judgment evidence from our point of view and I _____ you favorably to the plaintiff was Dr. Little told Mrs. Smith when she called him for the first time in 1989 that he had great difficulty accepting her premise.

SPECTOR: Was there conflicting evidence from the other side?

WOLFE: None that I'm aware of. I thought that the evidence was clear that there was no evidence that Dr. Little was aware if Thelma had an illegitimate child that she had _____.

GONZALEZ: How about other _____ members? Mr. Northrup cites that a conversation or a statement made by Mrs. Smith that she was informed by a family member that they knew that she was out there.

WOLFE: Well I'm trying to remember Mrs. Labrund deposition. Mrs. Labrund was like 3 years old - that was Thelma's baby sister in 1932 - and Mr. Northrup mentioned some conversation that might have occurred between Mrs. Labrund and the plaintiff. But frankly I haven't looked at that lately. I think if there was testimony on that it was very equivalent(?).

HIGHTOWER: Who was it that the grandmother told on her deathbed that her daughter had had an illegitimate child?

WOLFE: This is the very conversation I believe that was just being inquired about. And the best that I can remember Mrs. Labrund deposition.

HIGHTOWER: Who is Mrs. Labrund?

WOLFE: Mrs. Labrund is a woman who was Thelma's younger sister who was about age 3 in 1932. And honestly your honor do not remember any testimony of a deathbed conversation.

OWEN: What would be the normal statute of limitations in bringing a claim for an heirship once a will has been probated? What's the normal statute of limitations for coming forward and claiming that you are an heir?

WOLFE: I believe it's 4 years.

OWEN: Four years from what?

WOLFE: In this instance it would be 4 years from the date that the estate was closed.

OWEN: Not from the date the will was initially probated?

WOLFE: That's my understanding. That's the way we have looked at it thus far your honor is that the cutoff date for any cause of action would have been Dec. 31, 1987.

OWEN: And that's based on what? Is that case law or statute? What do you base that on? Just in a normal situation where an heir comes in and says I'm _____?

WOLFE: As far as the inception date?

OWEN: When does the statute of limitations begin to run on that _____?

WOLFE: Possibly your honor we could have referred to some case law on it. I do not have it in front of me.