Virginia Supreme Court Clarifies Intestacy Laws for Collaterals of the Half Blood

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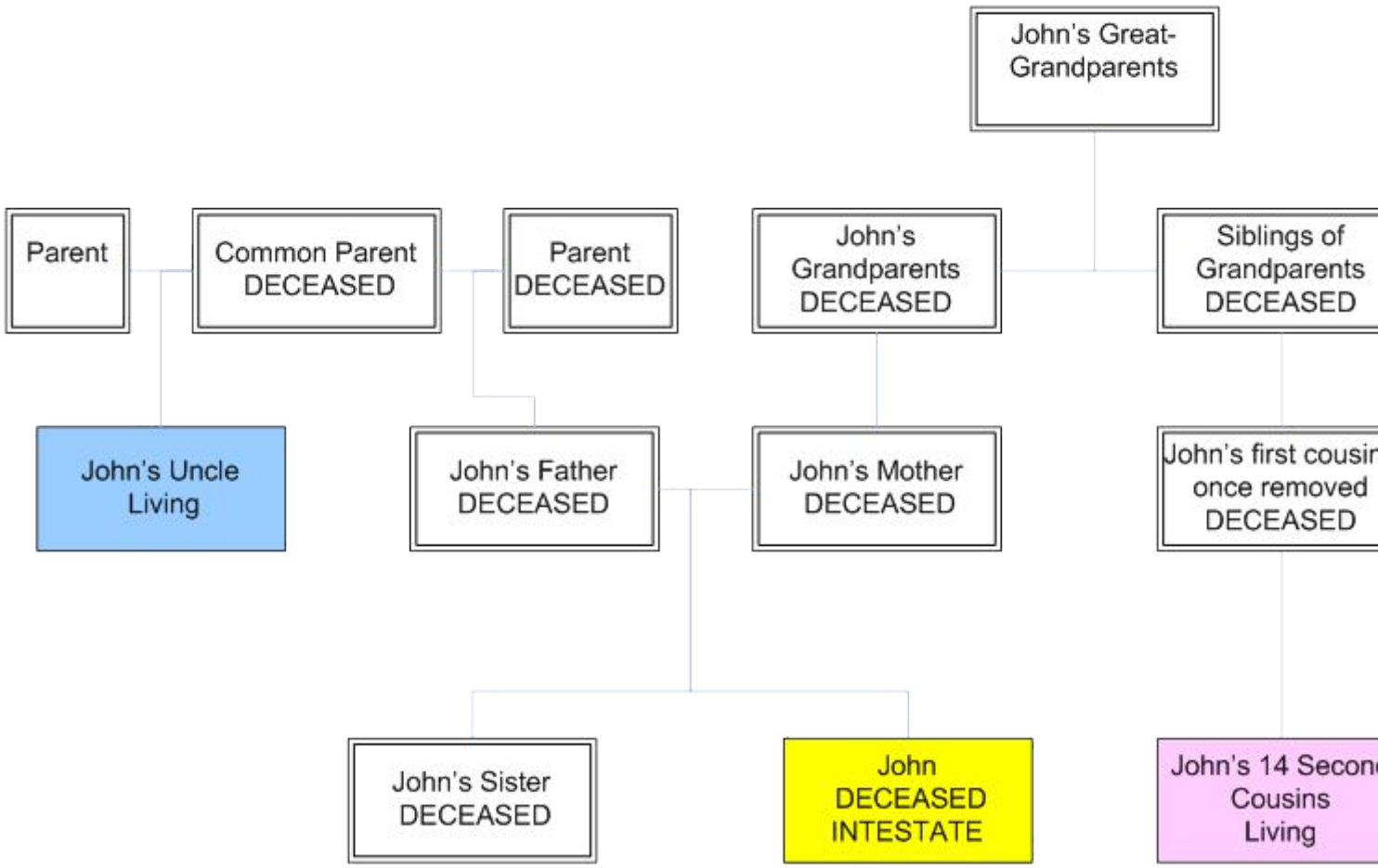
BY: THOMAS W. ALDOUS, JR.

In *Sheppard v. Junes*, 2014 Va. Lexis 56 (April 17, 2014), the Supreme Court of Virginia considered whether an intestate decedent?s half-uncle on his father?s side should take half as much as the decedent?s whole-blood second cousins on his mother?s side. The court held that the half-uncle was entitled to one-half, and not one-quarter, of the decedent?s estate.

Background. John Shepperd (?John?) died without a will. He never married and had no children. His sister and parents predeceased him. On his father?s side he was survived by a half-uncle, Jason Sheppard. On his mother?s side he was survived by fourteen second cousins.

This is the family tree:



When a person dies intestate and unmarried in Virginia, and has no surviving children, parents, siblings, or descendants of siblings, the estate is divided into two equal parts, called moieties. There is one moiety for the decedent?s father?s side and one moiety for the decedent?s mother?s side.

A collateral heir of the half blood takes half as much as a collateral heir of the whole blood. A collateral heir is someone who is not a direct descendant or ancestor of the decedent. A collateral heir includes a brother, sister, uncle, aunt, nephew, niece or cousin. John?s uncle was a collateral of the half blood.

The administrator of the estate sought advice from a circuit court to determine whether (i) John?s uncle was entitled to one-quarter of the estate and the second cousins were collectively entitled to three-quarters of the estate because half bloods take half as much as whole-bloods or (ii) John?s uncle was entitled to one-half of the estate, because he was the only heir on the paternal side, and the second cousins were collectively entitled to one-half of the estate. The circuit court held that John?s uncle was only entitled to receive one-quarter of the estate. The Supreme Court reversed and held that John?s uncle was entitled to one-half of the estate.

Analysis. The Supreme Court reviewed section 64.2-200 of the Code of Virginia. That section provides that, if a decedent has no surviving spouse, children, parents, siblings, or descendants of siblings, the estate is divided into two moieties. The court explained that one moiety goes to the paternal side as a separate class and that the other moiety goes to the maternal side as a

separate class. Each moiety is entirely separate from the other, and keeps to its own side, so long as there is at least one person to take the moiety. Under the statute, John?s uncle was entitled to receive the paternal moiety, and the second cousins were entitled to receive the maternal moiety.

The court then reviewed section 64.2-202 of the Code of Virginia. That section describes how to distribute a decedent?s estate among a class of persons and when those persons take per capita or per stirpes. The court stated that under the statute the estate is divided into equal shares ?based on the number of ?heirs and distributees? who qualify as part of the relevant class, so long as such persons either survive the decedent?s death, or, if they did not survive the decedent?s death, such persons left descendants who did survive the decedent?s death.? The surviving heirs or distributees who are in the closest degree of kinship to the decedent take per capita, and the descendants of each nonsurviving person take the nonsurviving person?s share, per stirpes. The court noted that the statute clearly instructs that the division among the heirs or distributees is applied separately to the paternal and to the maternal moieties created under section 64.2-200. Because John?s uncle was the only distributee for the paternal side, he was entitled to take the entire paternal moiety.

The court then clarified that the rule that a half blood collateral heir takes half as much as a whole blood collateral heir applies only to section 64.2-202. An administrator must first determine who is an heir under section 64.2-200. If, as here, the estate is divided into two moieties under section 64.2-200, each moiety is considered separately, and it does not matter whether there are half bloods or whole bloods receiving the other moiety. John?s uncle was the only person entitled to inherit the paternal moiety so the provisions of section 64.2-202 did not even apply. Because the maternal moiety and the paternal moiety were separate, it did not matter that John?s uncle was a collateral of the half blood. He was entitled to the entire paternal moiety.

Conclusion. In *Sheppard v. Junes*, the Supreme Court of Virginia reiterates that the paternal moiety and the maternal moiety described in section 64.2-200(A)(5) of the Code of Virginia are treated separately. The rule that collaterals of the half blood inherit half as much as those of the whole blood applies only to divisions among heirs under section 64.2-202(A) and only after the persons who are entitled to take as heirs are first determined under section 64.2-200.

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