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Terms of Endearment (and Other Interests)

Earlier this year, newspapers carried headlines about a lawsuit initiated by the father of a young man who did not survive the 9/11 collapse of the World Trade Center, in an attempt to claim a share of the \$29 million “relatives of victims” fund. What made his suit noteworthy was that he had not had any contact with his son since 1984, just three years after his son’s birth, but based his right to the money on their biological relationship. The mother who raised the young man alone argued that the father lost nothing on 9/11, having abandoned his family nearly two decades before the disaster. The father argued only that he had a right by blood ties, and cited case law in support of his stance.

Probably many heads are shaking over this sorry state of human affairs. After that initial reaction, the burning question is likely to be, “What the heck does this have to do with land?” The answer is that while we may not refer to terms of endearment when discussing real property interests, there are many parallels with the case at hand.

The primary issue here, of course, is abandonment: did this claimant abandon his son and thereby relinquish any rights to his son’s “estate” (being a portion of the \$29 million)? Or did he merely fail to interact with him for almost 18 years? What does it mean to “abandon”?

The plain language definition from my venerable hard-cover copy of Webster’s dictionary goes into greater depth than I had expected: “(1) to give up (something) completely (2) to leave, forsake, desert... *abandon* implies leaving a person or thing, either as a final, necessary measure (to *abandon* a drought area) or as a complete

rejection of one’s responsibilities, etc. (she *abandoned* her child)...” It then distinguishes between abandon, desert, and forsake.

While that seems clear and straightforward, a comparison to the legal profession’s definition is appropriate to determine similarity and differences. Here is what Black’s law dictionary has to say: “To desert, surrender, forsake, or cede. To relinquish or give up with intent of never again resuming one’s claim of right or

that lack of trains operating on a set of tracks means that the railroad company has lost its rights to the right-of-way. But an inactive line is not the same as an abandoned one. If a train traverses the tracks once a day, once a month, or once a year, the track is still active. If no trains are operating, the line is merely inactive. In the United States, railroads must file an “intent to abandon” with the Surface Transportation Board (STB) before the actual process of abandonment

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interest...[To abandon] includes the intention, and also the external act by which it is carried into effect.” Three full columns of fine-print definitions follow, relating to various forms of “abandonment”.

Although we don’t literally assert blood ties to our real property (or is that red clay in my arteries?), we can claim land through inheritance. Even so, interests can expire if owners of those rights do not act to protect them within a specified period of time, and we may argue that such persons or entities have “abandoned” their rights if they fail to act. The fixed period of time to dispute contrary claims, known as a “limitation of actions,” varies considerably between the states in our country.

The most common application of the term “abandon” I encounter is related to railroad easements. Many believe

can move ahead, and the process must be completed within a stated time frame once the STB has determined that no public harm will result from the cessation of rail service.

But not all instances of abandonment are so clear cut and defined by regulation. Over and over again, we see cases regarding easements that are no longer utilized by the dominant estate, and the servient estate petitions the court to declare the unexercised rights extinguished. And repeatedly, the courts tell us that mere non-use is not the same as abandonment. There must be some kind of activity indicative of the intent to never again exercise those easement rights. This might be the dominant estate’s dumping of many cubic yards of debris across an access easement. Removal of train tracks

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is inadequate, as there is the (remote) possibility that they will be replaced with better material.

A client is arguing with his neighbor over wooded riverfront property that regularly changes form and size due to storm events. The neighbor claims the land is his by adverse possession since my client has never developed the land and the neighbor has developed his. But merely not using the land to its reputedly highest economic benefit does not equate to abandonment of interests. My client pays his taxes, while his neighbor pays astronomical flood insurance.

Returning to our case, is there a time limit on parenthood? Those of us housing freshly graduated offspring just getting on their financial feet know there is not. So no statute of limitations applies to the strict argument of parental rights to a child's estate. The father also acted within the claim period established for this particular fund, and within the time frame for initiating suits, so he is not prevented from pursuing his action by laches. He isn't relying on any special considerations due to legal disabilities (insanity, imprisonment, being underage), and he did not mislead anyone to have the doctrine of estoppel apply to him. It seems a pretty clear-cut claim of right.

From this discussion, it looks like Absentee Father may not have abandoned his financial rights merely by failing to exercise his parental rights (and responsibilities). A court might be convinced that so many years without any contact with his son or with his son's mother (no phone calls, no letters, no visits, no child support payments after 1984) is a pretty good indication that when he walked out the door in 1984 and closed it behind him, it was literal as well as figurative. But failing that line of argument, is there anything in the law to protect those who did take part in raising the deceased young man from this monetary claim?

There is a great distinction between what is legal and what is justice. The differences between them are what gives rise to equity, which takes into account that a strict application of law will result in an unjust, unfair, or inequitable outcome. This may be the ultimate recourse. *AS*

Author's note: As this issue was going to press, this case was heard in the lower courts. The absentee father was not only denied any part of the 9/11 victim fund, but was ordered to pay over \$12 K in back child support payments. He had 30 days to appeal.