

Estate of Gregory Allen Burden 146 Cal. App. 4th 1021; 53 Cal. Rptr. 3d 390

The objector claimed that he was entitled to one-half of the decedent's estate because he had submitted clear and convincing evidence the decedent had openly held him out as his own child pursuant to Prob. Code, § 6453, subd. (b)(2). The decedent's daughter asserted that a showing greater than that made by the objector was necessary to meet the statute's requirements. The court held that the decedent's acknowledgments during his lifetime that the objector was his son were sufficient to meet the evidentiary burden imposed by § 6453, subd. (b)(2). The decedent did more than privately acknowledge that the objector was his child. This was proven under the clear and convincing evidence standard by the decedent's written acknowledgement that he was a party to conception; his having asked the objector's mother to marry him; and his admissions to his own mother, brother, and sister, as well as to the objector himself and his mother, that the objector was his son. The objector's right to intestate succession did not turn on a judicial determination of paternity, but rather on the factual question whether or not the decedent acknowledged his paternity in the prescribed statutory fashion.

The Court upheld the trial court's allowance of post mortem DNA evidence to establish paternity for purposes of intestate succession.