

# The Burger Court Opinion Writing Database

*Lalli v. Lalli*

439 U.S. 259 (1978)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



✓  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

November 30, 1978

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

Dear Lewis:

Re: 77-1115 Lalli v. Lalli

I can join you more heartily if on page 8 line 4,  
paragraph B you add after "States" the following:  
"have an interest of the highest order."

Regards,

Mr. Justice Powell  
cc: The Conference

WRB

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

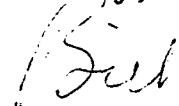
November 14, 1978

RE: No. 77-1115 Lalli v. Lalli

Dear Lewis:

In due course I shall circulate a dissent in the  
above.

Sincerely,



Mr. Justice Powell

cc: The Conference

WJB  
Please forward  
M

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: 28 NOV 1978

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-1115

Robert M. Lalli, Appellant,  
v. On Appeal from the Court  
Rosamond Lalli, Administratrix of Appeals of New York.  
of the Estate of Mario Lalli.

[December —, 1978]

MR. JUSTICE BRENNAN, dissenting.

*Trimble v. Gordon*, 430 U. S. 762 (1977), declares that the state interest in the accurate and efficient determination of paternity can be adequately served by requiring the illegitimate child to offer into evidence a "formal acknowledgment of paternity." *Id.*, at 772 n. 14. The New York statute is inconsistent with this command. Under the New York scheme, an illegitimate child may inherit intestate only if there has been a judicial finding of paternity during the lifetime of the father.

The present case illustrates the injustice of the departure from *Trimble* worked by today's decision sustaining the New York rule. All interested parties concede that Robert Lalli is the son of Mario Lalli. Mario Lalli supported Robert during his son's youth. Mario Lalli formally acknowledged Robert Lalli as his son. See *Matter of Lalli*, 38 N. Y. 2d 77, 79 (1975). Yet, for want of a judicial order of filiation entered during Mario's lifetime, Robert Lalli is denied his intestate share of his father's estate.

There is no reason to suppose that the injustice of the present case is aberrant. Indeed it is difficult to imagine an instance in which an illegitimate child, acknowledged and voluntarily supported by his father, would ever inherit intestate under the New York scheme. Social welfare agencies, busy as they are with errant fathers, are unlikely to bring paternity proceedings against fathers who support their chil-

Page 1

To: The Chief Justice  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Brennan

**2nd DRAFT**

Circulated: \_\_\_\_\_

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS  
**SUPREME COURT OF THE UNITED STATES** Recirculated: 1 DEC 1978

No. 77-1115

Robert M. Lalli, Appellant,  
v. Rosamond Lalli, Administratrix } On Appeal from the Court  
of Appeals of New York.  
of the Estate of Mario Lalli.

[December —, 1978]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE WHITE, MR. JUSTICE MARSHALL, and MR. JUSTICE STEVENS join, dissenting.

*Trimble v. Gordon*, 430 U. S. 762 (1977), declares that the state interest in the accurate and efficient determination of paternity can be adequately served by requiring the illegitimate child to offer into evidence a "formal acknowledgment of paternity." *Id.*, at 772 n. 14. The New York statute is inconsistent with this command. Under the New York scheme, an illegitimate child may inherit intestate only if there has been a judicial finding of paternity during the lifetime of the father.

The present case illustrates the injustice of the departure from *Trimble* worked by today's decision sustaining the New York rule. All interested parties concede that Robert Lalli is the son of Mario Lalli. Mario Lalli supported Robert during his son's youth. Mario Lalli formally acknowledged Robert Lalli as his son. See *Matter of Lalli*, 38 N. Y. 2d 77, 79 (1975). Yet, for want of a judicial order of filiation entered during Mario's lifetime, Robert Lalli is denied his intestate share of his father's estate.

There is no reason to suppose that the injustice of the present case is aberrant. Indeed it is difficult to imagine an instance in which an illegitimate child, acknowledged and voluntarily supported by his father, would ever inherit inte-

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

November 14, 1978

Re: No. 77-1115, Lalli v. Lalli

Dear Lewis,

I am glad to join your opinion for  
the Court.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall ✓  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart  
06 Dec 1978

Circulated: \_\_\_\_\_

1st DRAFT

Recirculated: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant,  
v.  
Rosamond Lalli, Administratrix } On Appeal from the Court  
of the Estate of Mario Lalli. } of Appeals of New York.

[December —, 1978]

MR. JUSTICE STEWART, concurring.

It seems to me that MR. JUSTICE POWELL's opinion convincingly demonstrates the significant differences between the New York law at issue here and the Illinois law at issue in *Trimble v. Gordon*, 430 U. S. 762. Therefore, I cannot agree with the view expressed in the concurring opinion that *Trimble v. Gordon* is now "a derelict," or with the implication that in deciding the two cases the way it has this Court has failed to give authoritative guidance to the courts and legislatures of the several States.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 14, 1978

*I await the  
dissent in*

Re: No. 77-1115 - Lalli v. Lalli

Dear Lewis,

I shall await the dissent in  
this case.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 28, 1978

Re: No. 77-1115 - Lalli v. Lalli

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Dear Bill,

Please join me.

Sincerely yours,



Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 14, 1978

Re: No. 77-1115-Lalli v. Lalli

Dear Lewis:

I await the dissent.

Sincerely,

*J.M.*

T.M.

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 29, 1978

Re: No. 77-1115 - Lalli v. Lalli

Dear Bill:

Please join me.

Sincerely,

*J.M.*  
T.M.

Mr. Justice Brennan

cc: The Conference

77-1115

Supreme Court of the United States  
Memorandum

27 Nov

, 1928

Bill -

Is this too "rough" and  
do you think it would be  
objectionable? My alternative  
is to join your article  
concerning ~~constitutional~~

I don't think it is  
too strong - I think  
the point of makes us  
totally naked - we are now  
faced with a situation by  
Slovene illumination. Before  
you hand, I would welcome  
your opinion in my case.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: NOV 30 1978

1st DRAFT

Recirculated: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant,  
v.  
Rosamond Lalli, Administratrix } On Appeal from the Court  
of the Estate of Mario Lalli. } of Appeals of New York.

[December —, 1978]

MR. JUSTICE BLACKMUN, concurring.

I agree with the result the Court has reached and concur in its judgment. I also agree with much that has been said in the plurality opinion. My point of departure, of course, is at the plurality's valiant struggle to distinguish, rather than overrule, *Trimble v. Gordon*, 430 U. S. 762 (1977), decided just last Term, and involving a small probate estate (an automobile worth approximately \$2,500) and a sad and appealing fact situation. Four Members of the Court, like the Supreme Court of Illinois, found the case "constitutionally indistinguishable from *Labine v. Vincent*, 401 U. S. 532 (1971)," and were in dissent. 430 U. S., at 776, 777.

It seems to me that the Court today gratifyingly reverts to the principles set forth in *Labine v. Vincent*. What Mr. Justice Black said for the Court in *Labine* applies with equal force to the present case and, as four of us thought, to the Illinois situation with which *Trimble* was concerned.

I would overrule *Trimble*, but the Court refrains from doing so on the theory that the result in *Trimble* is justified because of the peculiarities of the Illinois Probate Act there under consideration. This, of course, is an explanation, but, for me, it is an unconvincing one. I therefore must regard *Trimble* as a derelict, explainable only because of the overtones of its appealing facts, and offering little precedent for constitutional analysis of State intestate succession laws. If

**To:** The Chief Justice  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Haggard  
 Mr. Justice Stevens

**From:** Mr. Justice Powell

**Circulated:** 14 NOV 1978

**Recirculated:** \_\_\_\_\_

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant,  
 v.  
 Rosamond Lalli, Administratrix } On Appeal from the Court  
 of the Estate of Mario Lalli. } of Appeals of New York.

[November —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents a challenge to the constitutionality of § 4-1.2 of New York's Estates, Powers, and Trusts Law,<sup>1</sup> which requires illegitimate children who would inherit from their fathers by intestate succession to provide a particular form of proof of paternity. Legitimate children are not subject to the same requirement.

### I

Appellant Robert Lalli claims to be the illegitimate son of Mario Lalli who died intestate on January 7, 1973, in the State of New York. Appellant's mother, who died in 1968, never was married to Mario. After Mario's widow, Rosamond Lalli, was appointed administratrix of her husband's estate, appellant petitioned the Surrogate's Court for Westchester County for a compulsory accounting, claiming that he and his sister Maureen Lalli were entitled to inherit from Mario as his children. Rosamond Lalli opposed the petition. She argued that even if Robert and Maureen were Mario's

<sup>1</sup> 1965 N. Y. Laws, ch. 958, § 1. The statute was initially codified as N. Y. Decedent Est. Law § 83-a. In 1966 it was recodified without material change as N. Y. Est., Powers and Trusts Law § 4-1.2. 1966 N. Y. Laws, ch. 952. Further nonsubstantive amendments were made the next year. 1967 N. Y. Laws, ch. 686, §§ 28, 29.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: \_\_\_\_\_

Recirculated: 16 NOV 1978

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant,  
v.  
Rosamond Lalli, Administratrix } On Appeal from the Court  
of the Estate of Mario Lalli. } of Appeals of New York.

[November —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents a challenge to the constitutionality of § 4-1.2 of New York's Estates, Powers, and Trusts Law,<sup>1</sup> which requires illegitimate children who would inherit from their fathers by intestate succession to provide a particular form of proof of paternity. Legitimate children are not subject to the same requirement.

### I

Appellant Robert Lalli claims to be the illegitimate son of Mario Lalli who died intestate on January 7, 1973, in the State of New York. Appellant's mother, who died in 1968, never was married to Mario. After Mario's widow, Rosamond Lalli, was appointed administratrix of her husband's estate, appellant petitioned the Surrogate's Court for Westchester County for a compulsory accounting, claiming that he and his sister Maureen Lalli were entitled to inherit from Mario as his children. Rosamond Lalli opposed the petition. She argued that even if Robert and Maureen were Mario's

<sup>1</sup> 1965 N. Y. Laws, ch. 958, § 1. The statute was initially codified as N. Y. Decedent Est. Law § 83-a. In 1966 it was recodified without material change as N. Y. Est., Powers and Trusts Law § 4-1.2. 1966 N. Y. Laws, ch. 952. Further nonsubstantive amendments were made the next year. 1967 N. Y. Laws, ch. 686, §§ 28, 29.

*Chancery*, pp. 1, 5, 8, 9, 12, 14, 15, 16

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: \_\_\_\_\_

Recirculated: 5 DEC 1978

3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 77-1115

Robert M. Lalli, Appellant,  
v.  
Rosamond Lalli, Administratrix } On Appeal from the Court  
of the Estate of Mario Lalli. } of Appeals of New York.

[November —, 1978]

MR. JUSTICE POWELL announced the judgment of the Court in an opinion, in which THE CHIEF JUSTICE and MR. JUSTICE STEWART join.

This case presents a challenge to the constitutionality of § 4-1.2 of New York's Estates, Powers, and Trusts Law,<sup>1</sup> which requires illegitimate children who would inherit from their fathers by intestate succession to provide a particular form of proof of paternity. Legitimate children are not subject to the same requirement.

### I

Appellant Robert Lalli claims to be the illegitimate son of Mario Lalli who died intestate on January 7, 1973, in the State of New York. Appellant's mother, who died in 1968, never was married to Mario. After Mario's widow, Rosamond Lalli, was appointed administratrix of her husband's estate, appellant petitioned the Surrogate's Court for Westchester County for a compulsory accounting, claiming that he and his sister Maureen Lalli were entitled to inherit from

<sup>1</sup> 1965 N. Y. Laws, ch. 958, § 1. The statute was initially codified as N. Y. Decedent Est. Law § 83-a. In 1966 it was recodified without material change as N. Y. Est., Powers and Trusts Law § 4-1.2. 1966 N. Y. Laws, ch. 952. Further nonsubstantive amendments were made the next year. 1967 N. Y. Laws, ch. 686, §§ 28, 29.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 27, 1978

Cases held for No. 77-1115, Lalli v. Lalli

MEMORANDUM TO THE CONFERENCE

Two cases have been held for Lalli v. Lalli. These are Buck v. Hunter, No. 77-1567, and Robinson v. Kolstad, No. 78-5441.

No. 77-1567 BUCK v. HUNTER (Appeal from N.Y. Ct. Appeals)

Buck comes from New York and involves Estates, Powers, & Trusts Law § 4-1.2, the same statute the Court was faced with in Lalli. The facts are quite different from those in Lalli. In Buck, the intestate decedent himself is the illegitimate, and the contest is between his maternal kindred and his paternal kindred. A part of § 4-1.2 not considered in Lalli provides (1) that the mother and maternal kindred may inherit from an illegitimate; (2) the father may inherit from the illegitimate if the order of filiation described in Lalli has been obtained; and (3) the paternal kindred may in no event inherit from an illegitimate.

There was no filiation order in this case. Thus, the paternal kindred face two obstacles: (1) since the decedent's father did not obtain the requisite order of filiation, and therefore could not himself have inherited from the illegitimate, the paternal kindred are barred for that reason alone from inheriting through the father; (2) even if the father had obtained the filiation order, the statute absolutely bars any inheritance by paternal kindred. The New York Court of Appeals affirmed the judgment against the paternal kindred for both of these reasons.

It is clear that the Court need not consider the second basis for the exclusion of the paternal kindred because the first ground -- the failure of the father to obtain an order of filiation -- is an adequate and independent ground for the result. In light of the holding of Lalli that an illegitimate child himself may be excluded

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 20, 1978

Re: No. 77-1115 Lalli v. Lalli

Dear Lewis:

Would you add at the end of your opinion in this case the following:

"For the reasons stated in his dissent in Trimble v. Gordon, 430 U.S. 762, 777 (1977), Mr. Justice Rehnquist concurs in the judgment of affirmance."

Sincerely,

W~WW

Mr. Justice Powell

Copies to the Conference

77-1115

Supreme Court of the United States  
Memorandum

27 Nov

, 1978

Bill -

Is this too "rough" and  
do you think LP would be  
offended? My alternative  
is to join your first  
concurring comment.

I don't think it is  
too rough - I think  
the point it makes is  
totally valid - we are now  
placed with a statute by  
statute discrimination. If this  
is your opinion I would welcome  
your opinion in my conc.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 14, 1978

Re: 77-1115 - Lalli v. Lalli

Dear Lewis:

Not wanting to retreat from the Court's fine opinion in Trimble, I shall also await the dissent.

Respectfully,



Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 28, 1978

Re: 77-1115 - Lalli v. Lalli

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference