

**IN THE COURT OF APPEALS OF IOWA**

No. 2-938 / 12-0559  
Filed November 15, 2012

**IN THE MATTER OF THE  
ESTATE OF LYLE RICHARD  
PENA, Deceased.**

**JAMES ALCALA and MATTHEW  
ALCALA,**  
Intervenors-Appellants.

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Appeal from the Iowa District Court for Scott County, Thomas G. Reidel,  
Judge.

Claimants in the Estate of Lyle Richard Pena appeal from the ruling of the probate court that they had failed to prove the decedent had generally and notoriously recognized them as his children. **AFFIRMED.**

Steven E. Balk and Jennifer L. Kincaid of McGehee, Olson, Pepping, Balk & Kincaid, Ltd., Silvis, Illinois, for appellants.

Joseph A. Polaschek of Schalk Law Office, Davenport, for appellee.

Considered by Potterfield, P.J., and Danilson and Tabor, JJ.

**DANILSON, J.**

Lyle Richard Pena died intestate on September 20, 2009. Thirty-eight-year-old twins, Matt Alcala and James Alcala, filed a claim in the Estate of Lyle Richard Pena, which was denied by the fiduciary for the estate, Wendi Pena. After a hearing, the probate court ruled that the evidence established by a preponderance of the evidence that the decedent was the biological father of the two men. However, the court concluded there was not “clear and convincing evidence that Lyle Richard Pena generally and notoriously recognized Matt and James as his children during his lifetime.” See Iowa Code § 633.222 (2009).<sup>1</sup> The Alcalas appeal.

Upon our de novo review, see *In re Estate of Evjen*, 448 N.W.2d 23, 24 (Iowa 1989), we come to the same conclusion as did the probate court. See *id.* at 24-25 (setting forth applicable law). The scant evidence presented—that the decedent’s brother, on the day of the decedent’s funeral, told the Alcalas’ mother that the decedent did not want to be responsible for the boys—does not constitute clear and convincing evidence of general and notorious recognition of paternity. Because a full opinion would not augment or clarify existing case law, we affirm without further opinion. See Iowa Ct. R. 21.29(d) and (e).

**AFFIRMED.**

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<sup>1</sup> Iowa Code section 633.222 provides:

Unless the child has been adopted, a biological child inherits from the child’s biological father if the evidence proving paternity is available during the father’s lifetime, or if the child has been recognized by the father as his child; but the recognition must have been general and notorious, or in writing. Under such circumstances, if the recognition has been mutual, and the child has not been adopted, the father may inherit from his biological child.