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U.S. Supreme Court Rules That Posthumously Conceived Children Aren't Always Entitled to Social Security Benefits:

Astrue v. Capato, 566 U.S. ____ (2012)

Summary

In April of 2011, we reported on *Capato v. Comm'r of Social Security*, 631 F.3d 626 (3rd Cir. 2011). In *Capato*, the Third Circuit granted Social Security dependent benefits to twins posthumously conceived from their deceased father's sperm (the children were born 18 months after his death). The case was appealed to the U.S. Supreme Court. In a decision rendered on May 21, 2012, the U.S. Supreme Court overturned the Third Circuit and validated the Social Security Administration's approach, which defers to state intestacy law.

Related Information

[Posthumously Conceived Children of a Deceased Wage Earner are Entitled to Social Security: *Capato v. Comm'r of Social Security*, 631 F.3d 626 \(3rd Cir. 2011\)](#)

Background

Social Security provides dependent benefits for a deceased worker's eligible children under the age of 18 (or up to 19 if still in high school). Genetic technology has dramatically increased the number of posthumously conceived children requesting these benefits. Social Security has consistently denied these requests unless the children are eligible to inherit from the deceased wage earner under state intestacy law. Last year, the Third Circuit, in *Capato v. Comm'r of Social Security*, 631 F.3d 626 (3rd Cir. 2011), used a different standard – the definition section of 42 U.S.C. § 416 – in holding that twins born 18 months after the death of their father were entitled to benefits because they were the biological children of a deceased worker. The decision was appealed to the U.S. Supreme Court.

Facts

The facts remain the same. Robert Capato died of esophageal cancer in March of 2002. After his death, Robert's widow began in vitro fertilization using the frozen sperm of her deceased husband. She conceived in January of 2003 and gave birth to twins on September 23, 2003, eighteen months after her husband died. The following month she applied for Social Security benefits for these children based on her deceased husband's earnings record. The Social Security Administration denied her application and the District Court affirmed. The Third Circuit reversed.

Holding and Analysis

A unanimous Supreme Court agreed with the government's position that 42 U.S.C. § 416(h)(2)(A) enables the Social Security Administration to apply the intestacy law of the deceased worker's domiciliary state in determining whether the minor applicant is a "child" entitled to benefits. Whereas the Third Circuit had ceased its examination after holding that the Capato children met the definition of "child" under subsection 416(e),¹ the Supreme Court held that this definition is determined by state intestacy law under subsection 416(h).² Social Security dependent benefits exist to provide the children of a wage earner's family with protection against the hardship occasioned by the loss of the insured's earnings.³ The Court held that deferring to state intestacy law is consistent with Congress' intent that survivor benefits should only assist children who lost their source of support due to the unanticipated death of a parent.

Observation

By requiring that all children applying for Social Security benefits qualify under the deceased worker's state's intestacy law, the Court has validated a simple test. As long as the child is born or conceived within the time period set forth under intestacy laws, the child is entitled to benefits. However, by deferring to the state's intestacy laws, the Court has failed to establish a test that will render a consistent result. Intestacy laws in different states have different criteria and yield different results.⁴ While acknowledging that some children will collect while others will not, the Court nonetheless concluded that it would not overturn the statute in favor of creating a uniform federal rule.

¹ "The term 'child' means (1) the child or legally adopted child of an individual . . ."

² "Determination of Family Status. . . . In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this subchapter, the Commissioner of Social Security shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or, if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such." 42 U.S.C. § 416(h)(2)(A).

³ 566 U.S. ____, citing *Califano v. Jobst*, 434 U.S. 47, 52 (1977).

⁴ The Court's decision acknowledged the differences in the intestacy laws of the following states:

Florida: Child born posthumously may inherit through intestate succession only if conceived during the decedent's lifetime. Fla. Stat. Ann. § 732.106. But see Fla. Stat. Ann. § 742.17(4) which provides that a posthumously conceived child "shall not be eligible for a claim against the decedent's estate unless the child has been provided for by the decedent's will."

California: Child in utero within two years of parent's death. Cal. Prob. Code Ann. § 249.5(c).

Colorado: Child in utero within three years of parent's death or born within 45 months. Colo. Rev. Stat. Ann § 15.11-120(11).

Iowa: Child born within two years of parent's death. Iowa Code Ann. § 633.220A(1).

Louisiana: Child born within three years of parent's death. La. Rev. Stat. Ann. § 9:391.1(A).

North Dakota: Child in utero within three years of parent's death or born within 45 months. N.D. Cent. Code Ann. § 30.1-04-19(11).

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