



WHO'S YOUR DADDY?

Paternity and Social Security Benefits of After-Born Children

BY JOSEPH HOHLER III

Ryan died at 22. His last night alive he met up with friends for pizza and beer, only for a fight to break out between Ryan and another man. When police arrived, Ryan was on the ground, and another man was atop him, holding him down. Unfortunately, by then Ryan was in cardiac arrest, caused by positional asphyxiation. He later died. While Ryan's death was tragic on its own, it became all the more so when Ryan's sometime-girlfriend gave birth to his daughter just five months later.

Social Security

After the death of a parent, the surviving minor children are entitled to survivor's benefits through social security.¹ Receiving those benefits is generally a straight-forward process when the children are born during marriage, or where paternity was established through legally recognizable means, such as an Affidavit of Parentage, or a Judgment of Filiation.²

However, applying for benefits for the after-born children of a deceased man, as Ryan's daughter was, is a much different matter.

Ryan's Daughter – Allegedly

Following the birth of Ryan's daughter, her mother applied for survivor benefits for the child, providing the Social Security Administration (SSA) a DNA test between the child and her paternal grandfather. Despite this, the SSA denied the application as insufficient, relying on the law of intestate inheritance of the state where Ryan was domiciled at the time of death – Michigan.³ Plainly, if Ryan's baby could inherit from him under Michigan law, she could receive social security benefits under federal law, but because paternity had not yet been established for her, she was not Ryan's legal heir and, therefore, not entitled to collect benefits.

However, this does not leave her completely without options for rectifying the situation.

Process

The probate court has exclusive jurisdiction to determine a decedent's heirs.⁴ Any interested party may file a petition to

determine heirs,⁵ with the probate code offering several ways for a child born out of wedlock to be properly considered an heir:⁶

1. When an Acknowledgement of Parentage is signed by the child's parents;
2. A written request by the parents to correct a birth record for the child results in a corrected birth record;
3. Establishment of a mutually acknowledged relationship between the child and the man before the child reached age 18;
4. A court order of filiation;
5. A determination by a probate court that a man is the child's father, using the standards and procedures established under the Paternity Act; or
6. The man is determined to be the father under the Revocation of Paternity Act.

Due to Ryan's early death, subsections (1)-(4) & (6) were not available to his daughter, leaving (5) and the procedures of The Paternity Act⁷ as the only option to establish herself as an heir.

Ryan's Daughter – Legally

The Paternity Acts provides four different methods of determining paternity, two of which are relevant:⁸

1. A finding of the court determining the man is the father.
2. The use of genetic testing.

With respect to a court determining the man is the father, the probate court may consider the 'totality of the evidence'⁹ and determine paternity where it was established by a preponderance of the evidence.¹⁰ This means that because the available evidence prior to filing the petition to determine heirs included the DNA test between the child and her paternal grandfather, as well as no real doubts regarding paternity from Ryan's family, the court could have simply entered an order of paternity on those facts. However, because Ryan was killed in a fight, in which a police investigation and autopsy were performed, his genetic material was stored by the medical examiner and available for testing by the court.¹¹

Upon a properly filed *Petition to Determine Heirs*, the probate court held a hearing with the interested parties where it ordered the release of Ryan's DNA from the medical examiner to a lab for genetic testing. Genetic testing was performed on the sample, and the child, showing a 99.99% chance of paternity. Thereafter, the court entered an order determining the child was Ryan's daughter and, therefore, his heir.

Happy Ending – Sort Of

After the entry of the order determining heirs, mom re-applied for benefits for Ryan's daughter, and was quickly approved. For Ryan's parents, who had to go through the grief of losing a son at such a young age, they were able to take solace in the grandchild he left behind.

About the Author

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Endnotes

- 1 42 USC § 402(d). Benefits are not limited to the surviving minor children of the deceased, but are also available to the children of disabled individuals, and even those of retired parents. See also *Social Security Administration Pub. No. 05-10085* (March 2018).
- 2 20 CFR 404.355(a).
- 3 42 U.S.C. § 416(h)(2); and 20 CFR 404.355(b).
- 4 MCL 700.1302(a)(5).
- 5 MCR 5.308(B)(1). The proper forms to initiate the proceeding and establish a decedent's domicile at the time of death are *Petition to Determine Heirs, Separate Proceedings* (PC553) and *Testimony to Identify Heirs* (PC 565). On this petition the court can enter an *Order Determining Heirs – Separate Proceedings* (PC 554).
- 6 MCL 700.2114(1)(b)(i)-(vi).
- 7 MCL 722.711 et seq.
- 8 MCL 722.717(1)(d). The other methods are entry of a default verdict determining the man is the father, and a written or oral acknowledgment of paternity.
- 9 *In Re Koehler Estate*, 314 Mich App 667 (2016).
- 10 *Id.* at 677 (citing *Bowerman v MacDonald*, 431 Mich 1, 14 (1988)).
- 11 Even if the court could determine heirs on these facts, it is theoretically possible that the Social Security Administration might have rejected a determination of heirs based upon the DNA of a grandparent. See the Social Security Program Operations Manual PR 0115.025 Michigan.

