

October 14, 2003

The Honorable Daniel W. Shoemaker, Jr.  
Administrative Law Judge  
Social Security Administration  
Office of Hearings and Appeals  
333 Laurel Oak Road  
Suite 200  
Voorhees, NJ 08043

**Re: SSI Applicant N. C.**  
**S.S. No.:**

Dear Judge Shoemaker:

We respectfully submit this *amicus* brief on behalf of the American Civil Liberties Union and the American Civil Liberties Union of New Jersey in support of the appeal of N. C. from the decision of the Social Security Administration (S.S.A.) denying him survivorship benefits.

## **FACTS**

C. C., the insured worker in this case, died very suddenly and unexpectedly of a brain aneurysm on October 26, 2000. At the time of her death, C. lived in Rumson, New Jersey, with her life partner, E. K., and their son, N.C., the applicant for Social Security survivorship benefits in this case.

When C. died, she and E. had been together for over seven years. They were a committed couple, shared joint bank accounts, jointly owned and rented property, and in general considered themselves a family unit.

From early in their relationship, C. and E. talked about having and raising children together. In 1997, they decided to have their first child. After deciding that E. would become pregnant and give birth, they selected a sperm donor and made other arrangements in preparation for having a child. On March 25, 1998, E. gave birth to N. C. and E. decided to give N. C.'s last name. From the time of his birth, both C. and E. considered themselves to be and held themselves out to the world as N.'s parents.

After N.'s birth, E. stayed home to take care of him. C., who worked as an oncological nurse, was the breadwinner of the household. C. claimed N. as her dependent son on her tax returns.

C. and E. agreed from the beginning that C. would adopt N. They consulted attorneys about the legal steps they would need to take and had every intention of taking those steps, but unfortunately C. died before they were able to formalize her parent-child relationship with N. through adoption.

N., through E., filed his claim for Social Security survivorship benefits on November 13, 2000. On December 5, 2000, the S.S.A. denied his claim. N. filed a timely request for reconsideration, and the S.S.A. affirmed the denial on December 8, 2001.

## ARGUMENT

### **N. IS C.'S CHILD UNDER THE SOCIAL SECURITY ACT BECAUSE HE COULD INHERIT C.'S PERSONAL PROPERTY AS HER CHILD UNDER NEW JERSEY'S INTESTACY LAWS.**

The Social Security Act mandates the payment of survivor benefits to the child of an insured wage earner if the child was dependent upon the wage earner at the time of the insured's death. *See* 42 U.S.C. § 402(d)(1)(C). N. was financially dependent on C. and, under the Social Security law, N. is C.'s child and is entitled to receive survivorship benefits.

An applicant qualifies for Social Security survivorship benefits as the child of an insured individual whenever that applicant is entitled to inherit the insured's personal property as his or her child under the intestacy laws of the state in which the insured was domiciled at the time of his or her death. *See* 42 U.S.C. § 416(h)(2)(A). In this case, because C. was domiciled in New Jersey at the time of her death, New Jersey law applies.

N. is C.'s intestate heir under New Jersey law for two distinct reasons. First, as set forth more fully in the brief submitted by N.'s counsel, New Jersey law recognizes N. as C.'s child and intestate heir under its long-established "equitable adoption" doctrine. As the Fourth Circuit has held in this very context (reversing a lower court and granting an application for Social Security survivorship benefits), "[w]here there exists a valid contact to adopt, but legal adoption does not actually occur, New Jersey courts will enforce the contract in equity under certain circumstances for the benefit of

the adoptive child.” *D’Accardi v. Chater*, 96 F.3d 97, 98 (4th Cir. 1996) (citing *Burdick v. Grimshaw*, 168 A. 186 (N.J. Ct. of Chancery 1933); *Hendershot v. Hendershot*, 37 A.2d 770 (N.J. Ct. of Chancery 1944); *Ashman v. Madigan*, 122 A.2d 382 (N.J. Sup. Ct. 1956)).<sup>1</sup> It is difficult to imagine a more appropriate set of circumstances for a court or administrative body to exercise its equitable powers in enforcing such a contract.

In addition, N. is C.’s intestate heir under New Jersey law because C. was N.’s psychological parent and thus must be treated in parity with biological and adoptive parents under New Jersey Supreme Court case law, *V.C. v. M.J.B.*, 748 A.2d 539, 554 (N.J. 2000) (holding that a non-biological and non-adoptive mother had standing to petition for custody and visitation of the children she raised with their biological mother because she was a psychological parent). N.J. Stat. Ann. § 3B:5-10 provides that, where there is no formal adoption, “the parent and child relationship may be established as provided by the ‘New Jersey Parentage Act,’ P.L. 1983, c. 17 (C.9:17-38 et seq.)” That Act defines “parent and child relationship” as “the legal relationship existing between a child and the child’s natural or adoptive parents, incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.” See N.J. Stat. Ann. § 9:17-39.

Although N. is not C.’s biological or adoptive child, it is clear under New Jersey case law that N. nevertheless is C.’s child for purposes of the state’s intestacy statutes. The New Jersey Supreme Court has held that once it has been determined that a person is a “psychological parent,” that person “stands in parity with” a “legal parent.” *V.C.*, 748 A.2d at 554.

There can be little question that C. is N.’s “psychological parent” under *V.C.* For a non-biological, non-adoptive parent to qualify as a child’s psychological parent and thus stand in parity with a biological or adoptive parent, the following conditions must be met:

the legal parent must consent to and foster the relationship between the [putative psychological parent] and the child; the [putative psychological parent] must have lived with the child; the [putative psychological parent] must perform

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<sup>1</sup> Although one lower court has stated that the doctrine of equitable adoption is not recognized in New Jersey, *In re Adoption of a Child by N.E.Y.*, 630 A.2d 835, 839 (N.J. Sup. Ct. 1993), *amici*, like the Fourth Circuit, are “at a loss to explain th[is] assertion,” *D’Accardi*, 96 F.3d at 100 n.5, given the clear thrust of the case law cited above.

parental functions for the child to a significant degree; and most important, a parent-child bond must be forged.

*Id.* at 551.

C. clearly meets this test. E. and C. planned the birth of N. together with the intention that they would both raise him as his parents; the three of them lived together; C. performed significant parental functions including providing full financial support to both E. and N.; and a parent-child bond was formed. Thus, under V.C., C. is N.'s psychological parent for purposes of New Jersey law.

Because C. is N.'s psychological parent under V.C. and must be treated in parity with other legal parents, New Jersey's intestacy statute and Parentage Act must be read to include the parent-child relationship between C. and N. Thus, N. is entitled to inherit C.'s personal property as her intestate heir. Consequently, under the relevant provisions of the Social Security Act, N. qualifies for survivorship benefits as C.'s child. Therefore, the S.S.A.'s denial of benefits in this case was erroneous and must be reversed.

## **CONCLUSION**

The Secretary's denial of benefits in this case is at odds with the plain language of the Act and New Jersey case law regarding psychological parents and equitable adoption. Under New Jersey law, N. is entitled to benefits because he is C.'s child for purposes of intestate inheritance under New Jersey law.

For that reason, and for all of the reasons set forth in the brief submitted by party counsel, Your Honor should reverse the Secretary's denial and grant N.'s claim for surviving child benefits.

Respectfully submitted,

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