The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kimberly Lee Hall - Survivor Benefit Plan - Dependent Child
File: B-226909

Date: December 15, 1987

DIGEST

A retired Air Force sergeant elected to provide Survivor Benefit Plan annuity coverage for his daughter. The daughter was subsequently adopted by her stepfather following her mother's divorce and remarriage. The adoption proceeding was set aside by a later state court order. Questions about the soundness of the later court order setting aside the adoption do not overcome the presumption in favor of its validity. Therefore, the daughter remained eligible for an annuity under the Plan as the member's dependent child beneficiary.

DECISION

This action is in response to correspondence received from the Directorate of Retired Pay Operations of the United States Air Force Accounting and Finance Center. The Air Force asks whether it should pay a claim for a Survivor Benefit Plan annuity submitted by Kimberly Lee Hall, daughter of Technical Sergeant Richard L. Hall (Retired) (Deceased). We authorize the Air Force to make payment to her.

BACKGROUND

Congress adopted the Survivor Benefit Plan on September 21, 1972, Public Law 92-425, 86 Stat. 706, as amended and as codified, 10 U.S.C. §§ 1447-1455. The purpose of the Plan is "to establish a survivor benefit program for military personnel in retirement to complement the survivor benefits of social security." Department of Defense Directive No. 1332.27 § 101 (January 4, 1974). To that end, military retirees may elect to provide an annuity payable at their death to an eligible beneficiary in exchange for their contributions to the program during their life.

On September 30, 1974, Technical Sergeant Richard L. Hall retired from the United States Air Force. At that time he was married to Glenda F. Hall. They had a daughter, Kimberly, who was born on August 17, 1971. Upon retirement, Sergeant Hall elected to participate in the Survivor Benefit Plan and designated Kimberly as dependent child beneficiary.

On May 10, 1976, Sergeant and Glenda Hall were divorced. Divorce, however, does not preclude an otherwise eligible dependent child beneficiary from taking under the Plan. Sergeant Hall continued to make contributions on Kimberly's behalf until his death on July 1, 1982.

On May 23, 1980, Glenda married John C. Smith. Kimberly was adopted by him on December 10, 1981, without the knowledge or consent of Sergeant Hall. It is undisputed that Sergeant Hall died unaware of the adoption of his daughter by her stepfather. On August 8, 1985, an Alabama Circuit Court set aside the adoption at the request of Glenda and John Smith. A guardian ad litem represented Kimberly. The explanation furnished by the Smiths concerning these proceedings is that the adoption was necessary to acquire coverage for Kimberly under John Smith's group health insurance program, and nullification of the adoption was later believed necessary to secure the Survivor Benefit Plan annuity for her.

Kimberly Hall, by her attorney, has petitioned the Air Force for an annuity under the Survivor Benefit Plan. The Air Force questions whether she qualifies as an eligible Plan beneficiary.

It is suggested by the parties that Kimberly's eligibility under the Plan hinges on her relationship to Sergeant Hall under the Alabama laws of adoption. The Air Force suggests that the first adoption proceeding was valid and the subsequent proceeding setting aside the adoption order was invalid under Alabama law. Claimant suggests that the first proceeding is invalid and the second proceeding is valid.

DISCUSSION

Whether Kimberly can be considered an eligible beneficiary under the Plan depends on her status as a "dependent child" within the meaning of the Survivor Benefit Plan. Section 1447(5) of Title 10 of the United States Code states:

> "(5) 'Dependent child' means a person who is --
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> "(A) unmarried;

"(B) under 18 years of age . . . and

"(C) the child of a person to whom the Plan applies, including (i) an adopted child, and (ii) a stepchild, foster child, or recognized natural child who lived with that person in a regular parent-child relationship."

In clarifying similar language in a different context we have said:

> "Since it is generally recognized that there is no body of Federal domestic relations law, issues of personal status arising under [5 U.S.C. § 5582(b) (1970)] are resolved with reference to relevant State law. Consequently, in prior decisions requiring our determination as to the definition of a decedent's 'widow or widower,' or whether adopted children and step-children are entitled to consideration as 'children,' we have relied on State law." 54 Comp. Gen. 858, 860 (1975)

Regardless of what effect the adoption had on Kimberly's entitlement, it is our view that the subsequent Alabama Circuit Court action reestablished a full parent and child relationship between Sergeant Hall and Kimberly by setting aside the adoption decree. Accordingly, recognition of that order as valid assures Kimberly's status as a "child of the person to whom the Plan applies" within the meaning of the statute cited above.1/

In deciding whether or not to recognize a state court judgment as valid, we look to see if the state court had jurisdiction over both the parties and the subject matter. Master Sergeant Reece Cowan, B-186676, Oct. 28, 1976. In Cowan we examined the law of the state where the decision was rendered (Kansas) to see if jurisdiction was proper. There, a former spouse of a Plan member went to court after the death of her ex-husband and had their divorce decree annulled. In recognizing the annulment and thereby reestablishing her eligibility for SBP annuities, we concluded that this Office will recognize a state court

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1/ Because we recognize as valid the court order setting aside the adoption decree, we need not decide whether Kimberly would qualify as a dependent child beneficiary under the Plan even if the adoption decree was not set aside.

action even if it appears "unusual" so long as the threshold requirements of personal and subject matter jurisdiction are met. Id. at 3.

In an earlier case, 16 Comp. Gen. 890, 895 (1937), we held that a state court judgment which unquestionably violated the procedural rules of the issuing state would not be recognized absent a "complete record clearly establishing the legality of such proceedings and the correctness of such decree." There, while clarifying the reasons for denying a former spouse's claim for a 6-month death gratuity, we said that a Virginia court in nullifying a divorce between the deceased Army officer and the claimant had ignored its own procedural requirements for such an action.

These cases stand for the proposition that we will recognize the validity of a state court decision that meets threshold jurisdictional requirements and is not clearly in violation of that state's procedural rules. Conversely, findings of fact and other subjective elements of a state court judgment are not grounds for us to withhold recognition even where the action by the state court appears "unusual." These cases presume the validity of state court judgments and require us to recognize them as valid where possible.

The Air Force relies in part on B-199265-O.M., Sept. 29, 1981, for the proposition that the Comptroller General may be scrutinizing state court judgments more strictly now than when we decided Cowan. That claim was adjudicated on the basis that the court order was defective on its face and would not, therefore, be recognized. Moreover, it was not a decision of the Comptroller General. It was a settlement by the Claims Group of the General Accounting Office on a specific claim and does not establish a precedent.

The Air Force contends that the Alabama Circuit Court decision of August 8, 1985, should not be recognized because, among other things, it is procedurally invalid on its face. Specifically, the Air Force points to the common law rule expressed in 2 Am. Jur. 2d Adoption § 72 (1962), that in the context of an adoption proceeding, "[t]hose who participated in the proceedings, those claiming through them, or strangers to the proceedings, cannot attack an adoption decree collaterally when the court rendering it had jurisdiction of the subject matter." This principle was violated, they say, because Glenda and John Smith instigated both the adoption proceeding and the action setting aside the adoption.

The effect of the Air Force's refusal to recognize the Circuit Court decision is that, in their eyes, the adoption was never set aside and, therefore, at Sergeant Hall's death Kimberly was not a "child of a person to whom the Plan applies." However, it must be remembered in light of Cowan and the decision at 16 Comp. Gen. 890 (1937) that it is the law of the state rendering the decision, and not general principles of common law that must be used in determining the validity of that state court action.

We find no indication that the common law rule relied on by the Air Force has been used by Alabama in its adoption cases.2/ Nor is there any indication from Alabama's adoption statutes that such a limitation on parties was intended by that state's legislature. In fact, limiting access to the courts in this manner would be at odds with Alabama's stated concern that the "pole star" of any adoption proceeding is the best interests of the child. Rhodes v. Lewis, 246 Ala. 231, 20 So.2d 206 (1944).

The Air Force also contends, citing 2 Am. Jur. 2d Adoption § 79 (1962), that the pecuniary interests of the adoptive parents are insufficient grounds for setting aside an adoption decree. Underlying this contention is a belief that the pecuniary interests of Glenda and John Smith were the sole reason behind the Circuit Court's order of August 8, 1985. This is precisely the type of speculation that the Comptroller General decisions cited above prohibit. We must take at face value the Circuit Court's determination that setting aside the adoption decree was done in the best interests of Kimberly. The fact that the best interests of a minor child and the pecuniary interests of his or her adoptive parents may converge is neither surprising nor consequential.

While it is suggested that the proceedings were not suitably adversarial, insufficient evidence exists to conclude that the misgivings we had in 16 Comp. Gen. 890 (1937) are applicable here. Furthermore, although it is

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2/ Even assuming the rule does apply in Alabama, rather than overturning the Probate Court's decree on collateral jurisdictional grounds, the Circuit Court set aside that decree as contrary to the "best interests of the minor child." This distinction is crucial since the Am. Jur. rule only prevents the adoptive parents from asserting the due process rights of the natural parent but it does not prevent the adoptive parents from defeating the adoption on the basis that it was not in the best interests of the child.

suggested that greater elucidation of the court's reasoning should be required, its absence, under the circumstances, does not rise to the level required of a defect under the cited cases. Again, "unusual" results are insufficient to overcome the heavy presumption of validity urged by these precedents.

CONCLUSION

In the particular facts presented in this matter, we recognize as valid the Alabama Circuit Court's order setting aside the adoption decree. The effect of setting aside the adoption decree is to remove any doubt that Kimberly Hall qualifies as a "dependent child" of Sergeant Hall under the terms of 10 U.S.C. § 1447(5). Therefore, she is entitled to recover amounts owing as sole beneficiary under the Plan coverage elected by Sergeant Hall.

for Milton J. Socolar
Comptroller General
of the United States