

Ratzemberger



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Estate of John A. Thomas - Unpaid Compensation
File: B-233183
Date: March 3, 1989

DIGEST

The claims by his mother and alleged son for unpaid compensation due a deceased civilian employee are too doubtful to be allowed without resolution by a court of competent jurisdiction. The alleged son's claim is higher on the statutory list of distribution; however, his status as son is based on a document executed by the deceased in El Salvador recognizing him as the deceased's son, and other information of record makes his status as biological son questionable.

DECISION

ISSUE

This is in response to a request for reconsideration of our Claims Group's determination Z-2865725, July 13, 1988, concerning the claims for the unpaid compensation in the amount of \$4,447.81 due Mr. John A. Thomas, a deceased civilian employee. That determination considered the competing claims of Mrs. June P. Thomas, as mother, and that of Mr. Manuel de Jesus Thomas Rivas, as son based on a notarized recognition document stating that it was filed by Mr. Thomas with the civil court of El Salvador. The Claims Group concluded that there was too much doubt to warrant payment to either claimant. Mrs. Thomas takes exception to that finding and has requested reconsideration of her claim based on her contention that the recognition document is fraudulent and should be considered void. For the reasons stated below we conclude that, in the absence of a determination by a court of competent jurisdiction as to whether the document filed by Mr. Thomas recognizing Mr. Rivas as his son is valid, the status of Mr. Rivas as his son is too uncertain to authorize payment to either of the claimants.

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BACKGROUND

Mr. John A. Thomas, an employee of the Department of Agriculture stationed in San Sebastian, Puerto Rico, died in Aguadilla, Puerto Rico, on October 21, 1987. Mr. Thomas had not filed a designation of beneficiary with his agency for any unpaid compensation due him. Mr. Thomas did file a holographic will dated April 5, 1982, with his agency. This will indicates the individuals to whom he wished to leave designated portions of the proceeds from his Federal Employees Group Life Insurance, other life insurance policies, and personal effects. It does not, however, indicate to whom unpaid compensation should be paid, nor does it include a catch-all phrase indicating to whom any other monies due him should be paid.

Mr. Thomas, who was never married, is survived by his mother, Mrs. June P. Thomas, who has filed a claim for the unpaid compensation. A claim has also been filed by Mr. Manuel de Jesus Thomas Rivas, a resident of El Salvador, who claims that he is the recognized natural son of the deceased. Mr. Rivas's claim is based upon several documents, including copies of (1) a notarized "Title Deed of Recognition" dated May 10, 1980, in which Mr. Thomas recognizes Mr. Rivas as his own son with all accompanying rights and privileges; (2) the certification issued by the Civil Registry of El Salvador of the birth of Mr. Rivas; and (3) the subsequent marginal notation on the official certification indicating the paternal recognition by Mr. Thomas.

Mr. Rivas contends that under the laws of El Salvador these documents prove he is the natural child of Mr. Thomas since he has been recognized by Mr. Thomas voluntarily with the intent of conferring upon him all the rights of a natural child. He further contends that, inasmuch as these documents were properly executed and recorded, they have the value of full proof of his claim as a surviving child of Mr. Thomas.

Mrs. Thomas, in support of her claim, questions the validity of the documents submitted by Mr. Rivas. Her contention is that the documents are fraudulent since Mr. Thomas could not have been the natural father of Mr. Rivas. The record shows that Mr. Rivas was born February 10, 1955, in El Salvador. In 1954, Mr. Thomas was a student at the Virginia Polytechnic Institute in Blacksburg, Virginia. Also, it is stated that a passport issued to Mr. Thomas on May 26, 1954, shows no entrance to or exit from El Salvador. The first registered entrance of Mr. Thomas into El Salvador is September 6, 1972. Further, there is nothing in the record

which would indicate that Mr. Rivas's mother, Ms. Nieve Rivas, visited the United States in 1954.

In its determination, the Claims Group found that there is too much doubt to warrant payment to either claimant since the evidence necessary to establish the liability of the United States in this case is not clear.

OPINION

The disposition of unpaid compensation due an employee of the federal government is controlled by the provisions of 5 U.S.C. § 5582(b) (1982), which state in pertinent part that the money due shall be paid in the following order of precedence:

"First, to the beneficiary or beneficiaries designated by the employee in a writing received by the employing agency before his death.

"Second, if there is no designated beneficiary, to the widow or widower of the employee.

"Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

"Fourth, if none of the above, to the parents of the employee or the survivor of them. . . ."

Since the first and second provisions do not apply in this case, Mr. Rivas contends that he is next in line and should be paid the amount in question as the recognized child of Mr. Thomas.

Inasmuch as Mr. Rivas's alleged status as son is based upon the documents executed in El Salvador, we requested a review of the documents and an opinion as to their validity by the Hispanic Law Division (Division) of the Library of Congress. In its report to us dated December 16, 1988, the Division found that the recognition document, in which the parties have been clearly identified, meets the requirements of articles 279 and 280 of the Civil Code of El Salvador concerning the acknowledgement by the father of a natural child, since it is a notarized statement of recognition duly

recorded in the Civil Registry.^{1/} The Division noted that certifications issued by the Civil Registry are public documents, and as such are presumed to constitute full proof of civil status under the rules of article 260 of the Code of Civil Procedure.

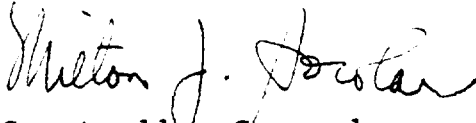
However, the Division points out that this legal presumption may be attacked under article 234 of the Civil Code by showing that the information contained in the records is false. This may be done by filing a petition to declare the certification null and void before the corresponding competent civil court in El Salvador, and by presenting evidence to substantiate the claim of nullity. The Division advises that a declaration of nullity may be requested by any interested party under the rules of nullity in articles 1551 to 1568 of the Civil Code. If the petition is successful, the court will order the rectification of the challenged record by the Civil Registry.

The conclusion, then, is that the documents submitted by Mr. Rivas constitute proof of civil status under the laws of El Salvador unless successfully challenged before a competent civil court in El Salvador.^{2/} However, in view of other information in the record Mr. Rivas's status as the son of Mr. Thomas is not sufficiently clear for us to authorize payment to him. It is questionable that Mr. Thomas was actually the biological father of Mr. Rivas since Mr. Thomas does not appear to have been able to have contact with Ms. Nieves Rivas until 1972, and Mr. Rivas was conceived in 1954. We further note that, while Mr. Thomas did leave some money to Mr. Rivas in his will, which was written after the recognition document, he did not refer to Mr. Rivas as his son but rather as someone, along with others mentioned in the will, who "meant a lot" to him.

^{1/} We note that none of the copies we received of the recognition document contained the actual signatures of Mr. Thomas or Mr. Rivas. However, we were advised by the Division that the actual signatures of the parties were not necessary since the notary public verified the appearance and identity of the parties. The notary public's signature is sufficient to provide the formality necessary to validate the document as a duly registered public instrument.

^{2/} The record contains a letter from an attorney in El Salvador retained by Mrs. Thomas which indicates that he is prepared to go forward with a petition to challenge the recognition document in the proper court.

Accordingly, the facts in this case are too uncertain for us to authorize payment to either claimant. In such doubtful cases we leave the claimants to pursue their remedy in a court of competent jurisdiction.

for 
Comptroller General
of the United States