

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 94-41344
(Summary Calendar)

LEDIA C. SONNIER, On Behalf of
Shayna L. Sonnier,

Plaintiff-Appellant,

versus

SHIRLEY S. CHATER, Commissioner of
Social Security,

Defendant-Appellee.

Appeal from United States District Court
from the Western District of Louisiana
(93-CV-1058)

July 26, 1995

Before DUHÉ, WIENER and STEWART, Circuit Judges.

PER CURIAM:*

On behalf of her daughter, Shayna, Ledia C. Sonnier appeals the district court's affirmance of the Commissioner's¹ denial of

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

¹ Effective March 31, 1995, the function of the Secretary of Health and Human Services in Social Security cases was transferred to the Commissioner of Social Security. P.L. No. 103-296. Accordingly, we refer herein to the government's administrative arm as "the Commissioner" rather than "the Secretary".

surviving child benefits. Because Shayna was not dependent on her natural father at the time of his death as required by statute, we conclude that she is not entitled to such benefits.

FACTS

Ledia C. Sonnier filed an application for surviving child's insurance benefits for her daughter Shayna under Title II of the Social Security Act and listed the deceased wage earner as Patrick J. Langlinais. She reported that Shayna had been adopted by Cleven P. Sonnier on April 7, 1987, more than three years prior to Langlinais's December 26, 1990 death.

The record indicated that the marriage between Ledia C. Sonnier and the decedent ended in divorce, that Sonnier was awarded sole custody of Shayna at that time, and that the decedent had no support obligations and had not made any contribution to Shayna's care after the divorce. On that basis, the Social Security Administration denied Sonnier's application. Sonnier sought reconsideration, but the denial of the application was upheld on reconsideration.

Sonnier obtained a hearing before an administrative law judge (ALJ). Sonnier testified at the hearing that Shayna had no contact whatsoever with the decedent after the divorce and that, aside from a single \$50 Christmas check, the decedent had not sent any money for Shayna. She stated that she had entered into an informal agreement with the decedent for a monthly \$50 child support payment, but that the decedent never honored the agreement. Sonnier further indicated that Shayna's adoptive father was

incarcerated and was not currently contributing to her support. The ALJ determined that Shayna was eligible to inherit the decedent's property under Louisiana law and, thus, was entitled to surviving child's benefits on the decedent's account.

The Appeals Council, on its own motion, decided to review the decision. The Council reasoned that, because Shayna had been adopted by Cleven Sonnier prior to the decedent's death, she could not be deemed to have been dependent on him, but must have been actually dependent on him to receive surviving child's insurance benefits. The Council reversed the ALJ's decision and denied Shayna's benefits on the decedent's account.

Sonnier filed a complaint in the district court, and the district court affirmed the decision of the Appeals Council and entered judgment for the Commissioner. Sonnier now appeals the district court judgment.

DISCUSSION

Sonnier argues that Shayna should be "deemed dependent" on the decedent for purposes of the Social Security Act because she is eligible for inheritance of the decedent's property under the laws of Louisiana. She reasons as follows: If Shayna were illegitimate, she would be "deemed" to have been dependent upon Langlinois; an illegitimate child should have no more rights than a legitimate child, therefore Shayna should be deemed dependent;

because Shayna should be deemed dependent, she should not have to show that she was actually financially dependent on the decedent.²

The findings of the Commissioner as to any fact, if supported by substantial evidence, are conclusive. 42 U.S.C. § 405(g). Substantial evidence is "more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Dellolio v. Heckler, 705 F.2d 123, 125 (5th Cir. 1983). This court cannot reweigh the evidence or substitute its judgment for that of the Commissioner, but must scrutinize the record in its entirety to ascertain whether substantial evidence supports the findings. Garcia v. Sullivan, 883 F.2d 18, 19 (5th Cir. 1989). No "substantial evidence" will be found only where there is a conspicuous absence of credible choices. Harrell v. Bowen, 862 F.2d 471, 475 (5th Cir. 1988).

To qualify for surviving-child's benefits a child must be dependent on the wage-earning decedent at the time of the decedent's death. 42 U.S.C. § 402(d)(1)(C). "A child is not deemed dependent on his natural parent if the child has been adopted by another individual and the natural parent, at the time

² Appellant cites Mathews v. Lucas, 427 U.S. 495, 498-99 (1975) ("Unless the child has been adopted by some other individual, a child who is legitimate, or a child who would be entitled to inherit personal property from the insured parent's estate under the applicable state intestacy law, is considered to have been dependent at the time of the parent's death."); and Cotlong v. Harris, 634 F.2d 890, 893 (5th Cir. 1981) (illegitimate child who met inheritance requirements for the State of Louisiana, but had not received actual support from the father, deemed dependent and entitled to survivor's benefits).

of his death, was not living with or contributing to the support of the child." Moretti v. Bowen, 806 F.2d 1238, 1239-40 (5th Cir. 1986). See also, 42 U.S.C. § 402(d)(3)(B).³

A natural child is generally "considered dependent" *unless* the child was legally adopted by someone else during the wage-earner insured's lifetime. If the child was adopted before her insured natural parent's death, then she is considered dependent upon the insured *only* if at the time of the insured wage earner's death he or she was living with or otherwise supported by the wage earner. See 20 C.F.R. § 404.361.⁴

Appellant suggests that equal protection demands that a legitimate child should be deemed dependent under the same circumstances under which a illegitimate child would be deemed dependent. The cases upon which she relies deal with illegitimate

³ 42 U.S.C. § 402(d)(3)(B) provides that, for the purposes of child survivor benefits:

A child shall be deemed dependent upon his father . . . [at the time of the father's death] unless, at such time, the individual was not living with or contributing to the support of such child and--

(B) such child had been adopted by some other individual.

⁴ 20 C.F.R. § 404.361 provides as follows:

If you are the insured's natural child, . . . you are considered dependent upon him or her. However, if you are legally adopted by someone else during the insured's lifetime and after the adoption you apply for child's benefits on the insured's earnings record, you will be considered dependent upon the insured (your natural parent) only if he or she was either living with you or contributing to your support . . . [w]hen the insured died

children who are not in the same circumstances as Shayna because they are not *adopted* natural children.⁵ We reject Appellant's equal protection argument out of hand. A natural child may be either legitimate or illegitimate. See 20 C.F.R. § 404.355; 42 U.S.C. § 416(h)(2) and (3). Both 42 U.S.C. § 402(d)(3)(B) and 20 C.F.R. § 404.361 apply equally regarding one who is a natural child, whether that natural child is legitimate or illegitimate. Moreover, Shayna, as a legitimate child who was adopted, is not situated similarly to any unadopted child. Thus, the only issue before us is whether the Commissioner's decision is supported by substantial evidence.

The transcript of the ALJ hearing establishes that Cleven P. Sonnier adopted Shayna prior to the wage earner's death. Moreover, the record shows that Langlinois was neither living with nor contributing to Shayna's support at the time of his death. As such, the record supports the Commissioner's finding that Shayna was not dependent on Langlinois for purposes of entitlement to

⁵ In Cotlong, the court determined that because the child was a member of a class of illegitimates entitled to inherit from her father in the event of intestacy, she is for social security child's insurance dependency purposes considered to be a "child" of the deceased wage earner, [42 U.S.C. §] 416(h)(2)(A), and, as such, she is statutorily deemed (in the same manner as is a legitimate child) to be dependent upon the wage earner for purposes of the child's insurance benefits.

Cotlong addressed whether the presumption of dependency regarding a legitimate child was also available to an illegitimate child; it does not support Sonnier's equal protection argument that Shayna (an adopted legitimate child) should have the same statutory presumption of dependency as an unadopted illegitimate child.

child survivor benefits. Whether or not Shayna *should* be "deemed dependent" on the decedent for purposes of the Social Security Act, Congress has unambiguously stated that she is not and the Commissioner's determination is supported by the record. For these reasons, the decision of the Appeals Council is AFFIRMED.