

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60427
Conference Calendar

EVA Y. TISDALE O/B/O
HERSELF AND RYAN TISDALE,

Plaintiffs-Appellants,

versus

DONNA SHALALA, SECRETARY
OF HEALTH AND HUMAN SERVICES,

Defendant-Appellee.

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Appeal from the United States District Court
for the Southern District of Texas
USDC No. 93-CV-22
- - - - -

(January 24, 1995)

Before POLITZ, Chief Judge, and HIGGINBOTHAM and DeMOSS,
Circuit Judges.

PER CURIAM:*

Judicial review of the Secretary's final decision is limited to determination whether the decision is supported by substantial evidence. 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

* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

judgment for that of the Secretary, 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).

A minor is entitled to survivor's benefits upon a showing of satisfactory evidence that the deceased was a natural parent and was contributing to the child's support at the time of death. 42 U.S.C. § 416(h)(3)(C)(ii). Eva Tisdale argues that the record is insufficient to support the Secretary's findings that the Gaddis children are James Tisdale's natural children and that he was providing monetary support for them at the time of his death.

On the paternity issue, the parties stipulated that Betty Gaddis and James Tisdale engaged in a sexual relationship. Betty Gaddis testified that her relationship with James Tisdale began prior to the birth of Damien, continued after Mamie's birth, and ended with James Tisdale's death and that she did not have sexual intercourse with another man during this time. Betty Gaddis presented corroborating testimony from Jimmy Gaddis, Stacy Gaddis, Damien Gaddis, and James Tisdale's daughters, Tammera Yvette Griffith and Stephanie Tisdale, who testified that James Tisdale orally admitted that he was the father of Damien and Mamie Gaddis. To rebut this evidence, Eva Tisdale offered her own testimony that James Tisdale was not the Gaddis children's father and the testimony of James Tisdale's friend, Cecil

Nichols, who stated that James Tisdale never admitted to him that he was the children's father.

On the support issue, Betty Gaddis testified that James Tisdale provided monetary support for the children in the form of cash or a money order and purchased gifts and clothing for them. This testimony was corroborated by Mary Triplett, Vivian Moore, Wilson Clements, and Stacy Gaddis, who all testified that they witnessed James Tisdale give money to Betty, presuming that it was for the children's support, and witnessed him give the children clothes and gifts. Jimmy Gaddis testified that he saw James Tisdale give money to Betty Gaddis and heard him tell her that the money was for the children. Tammera Yvette Griffith and Stephanie Tisdale testified that James Tisdale admitted to them that he supported the children. Damien Gaddis testified that James Tisdale bought him gifts and gave Betty Gaddis money to buy him shoes and clothes. Betty Gaddis presented copies of money orders from James Tisdale payable to her and designated for use as "support."

In rebuttal, Eva Tisdale testified that James Tisdale's salary was insufficient to provide such support and that she was unaware that he was doing so. Eva Tisdale provided an income and expense statement to support her allegations.

Review of the record reveals substantial evidence to support the Secretary's findings that Damien and Mamie Tisdale are the natural children of James Tisdale and that he contributed to their support at the time of his death.

AFFIRMED.