

**THE CASE OF THE PENURIOUS COURT—THE
EIGHTH CIRCUIT'S DENIAL OF SOCIAL SECURITY
BENEFITS: *LUKE V. BOWEN***

INTRODUCTION

On May 12, 1988, the United States Court of Appeals for the Eighth Circuit affirmed the decision of the United States District Court for the District of South Dakota to deny social security surviving child benefits to a minor, Scott Luke, in *Luke v. Bowen*.¹ In reaching this conclusion, the Eighth Circuit held that to receive surviving child insurance benefits under the Social Security Act² a child must be the wage earner's biological child.³ In spite of a written statement by the wage earner, Gary Groth, acknowledging Scott as his son, the court noted that the original denial of benefits by the Secretary of Health and Human Services (Secretary) was supported by substantial evidence that Groth had undergone a vasectomy.⁴

This Note outlines the evidence relied on by the Secretary, the administrative law judge, the district court and the Eighth Circuit, in reaching the decision to deny social security benefits to Scott Luke.⁵ In addition, this Note surveys similar cases from other circuits to show that the Eighth Circuit opinion is contrary to the intent of the social security legislation,⁶ to the weight of the evidence,⁷ and to the decisions of other circuits on the same issue.⁸ Specifically, this Note addresses the court's interpretation of section 416 (h)(3)(C)(i)(I) of Title 42 of the United States Code which requires a child to prove paternity, in addition to providing a written paternity acknowledgment from the deceased wage earner, to entitle a child to social security benefits.⁹ This interpretation, when contrasted with the legislative intent of the provision and alternative judicial interpretations, is clearly contrary to the underlying purpose of the Social Security Act.¹⁰

1. 868 F.2d 974, 974 (8th Cir. 1989).

2. 42 U.S.C. § 416(h)(2) or (h)(3).

3. *Luke*, 868 F.2d at 978.

4. *Id.* at 979.

5. *Id.* at 976-80.

6. See *infra* notes 87-91 and accompanying text.

7. See *infra* notes 104-05 and accompanying text.

8. See *infra* notes 95-100 and 148-74 and accompanying text.

9. 42 U.S.C. § 416(h)(3)(C)(i)(I) (1988). See *infra* notes 200-07 and 218 and accompanying text.

10. See *infra* notes 212, 214, and 216 and accompanying text.

FACTS AND HOLDING

Jeanette Luke and Gary Groth lived together from July, 1980 until May, 1984.¹¹ Although Luke and Groth never married,¹² Luke stated that Groth was her only sexual partner during their cohabitation.¹³ Luke further asserted that they did not use any form of contraception during that time because Groth had informed her that he had undergone a vasectomy.¹⁴

In spite of the vasectomy, Luke learned she was pregnant in December, 1980.¹⁵ She and Groth consulted Dr. Irvin Kaufman who informed them that not all vasectomies are one hundred percent reliable, and due to Luke's age, she could easily have gotten pregnant.¹⁶ When Dr. Kaufman tested Groth's semen in February, 1981, he did not discover any sperm.¹⁷

After Scott Luke's birth on August 29, 1981, Groth publicly maintained that he was Scott's father, notwithstanding the semen test results and the fact that Scott's birth certificate did not name a father.¹⁸ On October 16, 1981, Groth, who was receiving social security disability benefits,¹⁹ filed for child insurance benefits for Scott.²⁰ That application was accompanied by a signed, handwritten statement from Groth claiming Scott as his natural child.²¹ Following this application, Scott was eligible to receive benefits, but such benefits were terminated upon a finding that Groth was no longer disabled.²² Groth's ex-wife protested the payments to Scott and informed the Secretary of Groth's vasectomy.²³ In response to this protest, Groth filed a second statement acknowledging paternity on November 21, 1981.²⁴

On December 6, 1982, Groth again applied for child insurance

11. *Luke v. Bowen*, 868 F.2d 974, 975 (8th Cir. 1989).

12. *Id.* South Dakota does not recognize common-law marriages. *See generally* S.D. CODIFIED LAWS ANN. §§ 25-1-1 to 25-1-40 (1984).

13. *Luke*, 868 F.2d at 975.

14. *Id.* The date of this procedure and the medical records detailing this operation were unavailable due to a fire at the medical clinic where the procedure had been allegedly performed and the death of the doctor who had performed it. *Id.* at 979 n.8.

15. *Id.* at 975.

16. *Luke v. Bowen*, 666 F. Supp. 1340, 1342 (D.S.D. 1987). Jeanette was 25 years-old at the time she became pregnant. *Id.*

17. *Luke*, 868 F.2d at 975.

18. *Id.* at 975-76.

19. *Id.* at 975. Groth's disability was never identified by the court. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.* at n.2. Any benefits which Scott would receive would have reduced the benefits being paid to James Groth, the son of Groth and his ex-wife Barbara. *Id.*

24. *Id.* at 975.

benefits for Scott.²⁵ This request was denied because Groth was ineligible for disability benefits and Scott failed to meet the relationship requirements of the Social Security Act (Act).²⁶ The Secretary relied on the fact that Dr. Kaufman's report indicated Groth was incapable of fathering a child because of the vasectomy.²⁷

Luke and Groth separated in May, 1984, at which time Luke began receiving Aid for Dependent Children (ADC).²⁸ In addition, the Veteran's Administration (VA) recognized Scott as Groth's child and began paying Luke pension benefits on behalf of Scott.²⁹ However, Groth attempted to terminate the VA benefits and when he reapplied for social security benefits in November, 1984, he indicated that he had no minor children.³⁰

Because the Department of Social Services was making ADC payments to Luke, it initiated a paternity suit against Groth on behalf of Luke and Scott in early 1985 and a hearing was set for early June.³¹ Groth did not appear at the hearing but he was represented by his attorney who contested the action.³² Luke subsequently learned that Groth had died on June 13, 1985.³³ On July 2, 1985, Luke filed for child survivor insurance benefits on behalf of Scott.³⁴ In reaching the decision to deny Scott child survivor benefits, the various tribunals noted that the issue was whether the child survivor provisions of the Act, and consequently, South Dakota law, required a claimant to prove a biological relationship with a deceased wage earner as a threshold requirement to recover social security benefits.³⁵

The language of section 416 (h)(2)(A), one of the child survivor provisions of the Act, states that:

In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this subchapter, the Secretary shall apply such law as would

25. *Id.*

26. 42 U.S.C. § 402(d) (1988) (referencing 42 U.S.C. § 416(e) in which it states that, "the term 'child' means (1) the child or legally adopted child of an insured individual ...").

27. *Luke*, 868 F.2d at 975.

28. *Id.* at 976.

29. *Id.*

30. *Id.* Groth's social security disability benefits had been terminated in 1981. *Id.* at 975.

31. *Id.* at 976.

32. *Id.*

33. *Id.* The cause of Groth's death was not identified by the court. *Id.*

34. *Id.*

35. *Id.* at 979. The tribunals referred to are the administrative law court, the United States District Court for the District of South Dakota, and the United States Court of Appeals for the Eighth Circuit. See 42 U.S.C. § 416(h)(2)(A) and (h)(3)(C)(i)(I) (1988); S.D. CODIFIED LAWS ANN. § 29-1-15 (1984).

be applied in determining the devolution of the intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death³⁶

Groth was domiciled in South Dakota at the time of his death,³⁷ and therefore, South Dakota law applied.³⁸ The pertinent statutory language states that "[e]very illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child. . . ."³⁹

In the event the child is prohibited from inheriting under the appropriate state law, the Act provides the applicant an alternative option under section 416(h)(3) which states that:

An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2) of this subsection, shall nevertheless be deemed to be the child of such insured individual if:

. . .

- (C) in the case of a deceased individual—
 - (i) such insured individual—
 - (I) *had acknowledged in writing that the applicant is his or her son or daughter,*
 - (II) had been decreed by a court to be the mother or father of the applicant, or
 - (III) had been ordered by a court to contribute to the support of the applicant because the applicant was his or her son or daughter, and such acknowledgment, court decree, or court order was made before the death of such insured individual, or
 - (ii) such insured individual is shown by evidence satisfactory to the Secretary to have been the mother or father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died.⁴⁰

Once the Secretary denied Scott benefits, Luke appealed to an administrative law judge (ALJ) who made four specific findings.⁴¹

36. 42 U.S.C. § 416(h)(2)(A) (1988).

37. *Luke*, 868 F.2d at 976. Groth died in Minnesota but was considered by the administrative law judge who reviewed the Secretary's denial of benefits to have been domiciled in South Dakota. *Id.* at 977.

38. *Id.* at 976.

39. S.D. CODIFIED LAWS ANN. § 29-1-15 (1984).

40. 42 U.S.C. § 416(h)(3)(C) (1988) (emphasis added).

41. *Luke*, 868 F.2d at 976.

These findings denying Scott any benefits were adopted by the United States District Court for the District of South Dakota following Luke's appeal pursuant to 42 U.S.C. § 405(g).⁴²

The district court began its analysis by stating that Scott was not eligible for benefits as an adopted or a legitimate child of Groth because Groth had never adopted Scott or married Luke.⁴³ Second, the court found that Scott failed to establish that Groth was his biological father, stating that "substantial evidence supports the ALJ decision that Groth was not Scott's biological father. . . ."⁴⁴

The court's third finding was that Scott was not eligible for benefits under section 416(h)(2)(A) because he was unable to inherit as Groth's illegitimate child under South Dakota law.⁴⁵ Finally, the court found that Scott did not qualify for benefits under section 416(h)(3)(C)(i)(I) because Groth's written acknowledgment that Scott was his son was insufficient in light of evidence that Scott had no biological relationship to Groth.⁴⁶

Based on these findings, the district court upheld the decision of the ALJ denying Scott social security benefits.⁴⁷ The court ruled that the notarized statements from Groth acknowledging paternity were insufficient to meet the biological relationship requirements of South Dakota law and 42 U.S.C. § 416(h)(3)(C)(i).⁴⁸

The court relied on the dissent in the South Dakota Supreme Court case of *Application of G.K.*⁴⁹ to support its interpretation of South Dakota law.⁵⁰ The *Application of G.K.* case involved a custody dispute, in which the dissent noted that the *natural* father of the child had recognized legal rights in the dispute.⁵¹ Additionally, the district court referred to *In Re Oakley's Estate*,⁵² in which the Nebraska Supreme Court specifically held that the deceased's acknowl-

42. *Id.* Section 405(g) grants a right of appeal to a claimant under the Act. 42 U.S.C. § 405(g) (1988).

43. *Luke*, 666 F. Supp. at 1342.

44. *Id.* at 1344.

45. *Id.* See also S.D. CODIFIED LAWS ANN. § 29-1-15 (1984). See *supra* note 36 and accompanying text. The Eighth Circuit further concluded that "[t]he status of child [under the South Dakota statute] is primarily based on a biological relationship which requires that the individual acknowledging the child have had the capacity or opportunity to father the child." *Luke*, 868 F.2d at 976. The statute however makes no specific reference to a requirement of establishing a biological relationship. See *generally* S.D. CODIFIED LAWS ANN. § 29-1-15 (1984).

46. *Luke*, 868 F.2d at 976. The evidence to which the court referred was that Groth had undergone a vasectomy. *Id.*

47. *Id.*

48. *Id.*

49. 248 N.W.2d 380 (S.D. 1976).

50. *Id.* See *infra* note 124 and accompanying text.

51. *Application of G.K.*, 248 N.W.2d at 385 (Zastrow, J., dissenting).

52. 149 Neb. 556, 31 N.W.2d 557 (Neb. 1948).

edgment alone would confer no inheritance rights on a daughter in the absence of evidence that the girl was the deceased's illegitimate child.⁵³

The court in *Luke* also affirmed the Secretary's decision to deny benefits under the alternative provision of section 416(h)(3)(C)(i)(I).⁵⁴ The court stated four primary reasons in concluding that a child must establish a biological relationship with the deceased wage earner before being entitled to receive benefits under the Act.⁵⁵ First, the court cited the definition of "child" found in section 416(e).⁵⁶ Second, the court noted that the language of section 416(h)(3)(C) requires that the applicant be the "son or daughter" of the wage earner.⁵⁷ Third, the court cited to section 404.355 of Title 20 of the Code of Federal Regulations which specifically provides that the claimant must be the insured's "natural child."⁵⁸ Finally, the court relied on the legislative history of section 416(h)(3).⁵⁹

The district court noted that there was substantial evidence that there was no biological relationship between Groth and Scott and concurred with the findings of the Secretary.⁶⁰ The district court then granted the Secretary's motion for summary judgment.⁶¹ Scott's claim was then appealed to the United States Court of Ap-

53. *Id.* at 565, 31 N.W.2d at 562. See *infra* note 112 and accompanying text.

54. *Luke*, 868 F.2d at 978.

55. *Id.*

56. *Id.* See *supra* note 26 and accompanying text.

57. *Luke*, 868 F.2d at 978. See *supra* note 40.

58. *Luke*, 868 F.2d at 978. See 20 C.F.R. § 404.355 (1988). Section 404.355 states that:

[y]ou may be eligible for benefits as the insured's natural child if one of the following conditions is met: . . . (C) You are the insured's natural child and your mother or father has not married the insured, but the insured has either acknowledged in writing that you are his or her child, been decreed by a court to be your father or mother, or been ordered by a court to contribute to your support because you are his or her child.

Id.

59. *Luke*, 858 F.2d at 978. S. REP. NO. 404, 89th Cong., 1st Sess. 8, reprinted in 1965 U.S. CODE CONG. & ADMIN. NEWS 1943, 2050. The legislative history of § 416(h)(2) and (3) states that:

[t]he committee believes that in a national program that is intended to pay benefits to replace the support lost by a child when his father retires, dies, or becomes disabled, whether a child gets benefits should not depend on whether he can inherit his father's intestate personal property under the laws of the State in which his father happens to live. The committee has therefore included in the bill a provision [the statutory alternative of section 416(h)(3)] under which benefits would be paid to a child on the earnings record of his father, even though the child cannot inherit the father's intestate property, if the father had acknowledged the child in writing, . . . or is shown by other evidence satisfactory to the Secretary . . . to be the child's father.

Id.

60. *Luke*, 868 F.2d at 976.

61. *Id.* at 974.

peals for the Eighth Circuit.⁶²

The Eighth Circuit began its discussion by noting its obligation to affirm the Secretary's decision to deny benefits if that decision was "supported by substantial evidence on the record as a whole."⁶³ The court noted, however, that while the Secretary's conclusions of fact would be granted deference on review, that same presumption of validity would not attach to the Secretary's conclusions of law.⁶⁴ In addition, the Eighth Circuit recognized that the interpretation of state law by the district court was entitled to deference on appeal and would only be reversed if the appellate court was convinced that the district court had ascertained or applied local law incorrectly.⁶⁵

Given the deference due to the district court's interpretation of the state law, the Eighth Circuit noted that although South Dakota intestacy law did not make explicit reference to a requirement of a biological relationship such a requirement could be reasonably inferred.⁶⁶ The court further noted that this interpretation was consistent with the dissent in *Application of G.K.*⁶⁷

The Eighth Circuit also recognized the presumption established by South Dakota law that "[a]n admission by an alleged father of paternity of a child born out of wedlock is prima facie evidence of his paternity."⁶⁸ The Secretary and the district court failed to explicitly address the applicable South Dakota law provision in reaching the decision to require threshold proof of paternity.⁶⁹ However, the Eighth Circuit suggested that the Secretary had implicitly recognized the law and had established the requisite burden of clear and convincing evidence necessary to overcome the presumption given Groth's supposed vasectomy.⁷⁰ The Eighth Circuit concluded that the Secretary and the district court had not erred in construing South Dakota law as requiring a threshold requirement of a biological relationship before Scott would be able to inherit from Groth.⁷¹

62. *Id.*

63. *Id.* at 976; *Sherrill for Sherrill v. Bowen*, 835 F.2d 166, 168 (8th Cir. 1987) (holding that mother would have to show that the child was the biological child of deceased wage earner to receive benefits under § 416(h)(3)(C)(ii)); *Gavin v. Heckler*, 811 F.2d 1195, 1199 (8th Cir. 1987) (holding that the court would not accept the Secretary's decision to deny benefits if the decision was clearly contrary to the evidence in the record).

64. *Luke*, 868 F.2d at 976 (citing *Smith v. Heckler*, 707 F.2d 1284, 1285 (11th Cir. 1983)).

65. *Luke*, 868 F.2d at 977 (citing *Hazen v. Pasley*, 768 F.2d 226, 228 (8th Cir. 1985)).

66. *Luke*, 868 F.2d at 978.

67. *Id.*

68. *Id.* See S.D. CODIFIED LAW ANN. § 25-8-49 (1984).

69. *Luke*, 868 F.2d at 978.

70. *Id.* (citing *In re FJF*, 312 N.W.2d 718 at 721).

71. *Id.*

The Eighth Circuit upheld the Secretary's and the district court's decisions to require a threshold establishment of a biological relationship under the alternative option of section 416(h)(3)(C)(i).⁷² The Eighth Circuit began its analysis by reiterating the four primary grounds upon which the district court had relied.⁷³ The court stated that, given these considerations, the district court and the Secretary had correctly interpreted the law as requiring a threshold establishment that the child be the wage earner's biological child.⁷⁴

The Eighth Circuit further stated that this interpretation was consistent with previous recognitions of this requirement under section 416(h)(3)(C)(ii).⁷⁵ The Eighth Circuit then noted that section 416(h)(3)(C)(ii) was an alternative entitlement provision to section 416(h)(3)(C)(i) and imputed the biological relationship requirement of the former provision into the latter.⁷⁶

Finally, to support the conclusion that under section 416(h)(3)(C)(i) proof of a biological relationship was required in addition to a written acknowledgment of paternity, the Eighth Circuit quoted *McMillian ex rel. McMillian v. Heckler*⁷⁷ which stated that:

[I]t is clear that Congress intended that a claimant invoking either of the alternative means of establishing entitlement provided by section 416 (h)(3)(C) should be put to proving as one ultimate fact that the insured was his natural parent . . . parentage of the insured is an ultimate fact to be proven under either paragraph (C)(i) or (C)(ii).⁷⁸

Having decided that proof of a biological relationship was a threshold requirement for recovery under both sections 416(h)(2)(A) and 416(h)(3)(C)(i), the Eighth Circuit proceeded to examine whether the Secretary's decision that such a relationship had not been established was "supported by substantial evidence on the record as a whole."⁷⁹ The court announced that under this standard of review, one must consider both the evidence which supported the Secretary's decision

72. *Id.*

73. *See supra* notes 25, 37, and 54 and accompanying text.

74. *Luke*, 868 F.2d at 978.

75. *Id.* at 978-79. *See supra* note 40. *See also Sherrill*, 835 F.2d at 169, *Imani ex rel. Hayes v. Heckler*, 797 F.2d 508, 512 (7th Cir.), *cert. denied*, 479 U.S. 988 (1986) (holding that to receive benefits under § 416(h)(3)(C)(ii), a child would have to prove his dependency on the wage earner); *Greer ex rel. Greer v. Heckler*, 756 F.2d 794 at 798 (10th Cir. 1985) (finding that to receive benefits under 42 U.S.C. § 416(h)(3)(C)(ii), a child must prove a biological relationship with the wage earner).

76. *Luke*, 868 F.2d at 979.

77. 759 F.2d 1147 (4th Cir. 1985) (holding that unless the district court's factual findings are clearly erroneous they will be affirmed on appeal).

78. *Luke*, 868 F.2d at 979 (quoting *McMillian*, 759 F.2d at 1153).

79. *Id.*

and that which detracted from the decision.⁸⁰

Taking this standard into account, the court held that the Secretary had not erred in giving greater weight to the evidence which supported non-paternity.⁸¹ The court essentially relied on the fact that (1) Groth had admitted having a vasectomy, a procedure which is highly successful in most cases, and (2) Dr. Kaufman had discovered no sperm in Groth's semen several months after the pregnancy had occurred.⁸² The court went on to state that Groth's acknowledgment of Scott was equivocal in light of his later attempts to terminate Scott's VA benefits and his disavowal of any children under age eighteen after he and Luke had separated.⁸³ Thus, in spite of Groth's previous written acknowledgments of Scott as his son, the Eighth Circuit held that the Secretary's decision to deny Scott social security child survivor benefits was supported by substantial evidence on the record as a whole.⁸⁴

The dissent of Judge Heaney disputed the majority's interpretation of section 416(h)(3)(C)(i).⁸⁵ Judge Heaney supported his analysis by examining the underlying purpose of the social security legislation.⁸⁶ The dissent noted that the purpose of social security benefits was to provide support to children who had lost the actual or anticipated support of a parent.⁸⁷ In light of this purpose, the dissent concluded that it was appropriate for the provisions to be construed as liberally as possible.⁸⁸ The dissent noted that this liberal construction had been explicitly followed in *Smith v. Heckler*,⁸⁹ and *Adams v.*

80. *Id.* (citing *Piercy v. Bowen*, 835 F.2d 198, 191 (8th Cir. 1987)).

81. *Id.*

82. *Id.* Vasectomies are successful in 399 out of 400 cases. *Id.* See also J. SCIARRA, GYNECOLOGY AND OBSTETRICS 1-12 (1989).

83. *Luke*, 868 F.2d at 979-80.

84. *Id.* at 980.

85. *Id.* (Heaney, J., dissenting).

86. *Id.* at 984 (Heaney, J., dissenting).

87. *Id.* See *Jimenez v. Weinberger*, 417 U.S. 628, 634 (1974) (stating that the primary purpose of Social Security Act provisions pertaining to children's benefits was to provide support for dependents of a disabled wage earner and was not to replace only that support actually enjoyed before the onset of disability); *Suarez v. Secretary of Health & Human Servs.*, 755 F.2d 1, 3 (1st Cir.), *cert. denied*, 474 U.S. 844 (1985) (noting that the child benefit provisions of the Social Security Act were enacted to protect any child financially dependent on an insured wage earner in the event that that wage earner becomes unable to continue providing for the child's support); *Parsons ex rel. Bryant v. Health & Human Servs.*, 762 F.2d 1188, 1190 (4th Cir. 1985) (declaring that the Social Security Act was designed to provide for those children of the deceased who could demonstrate dependence).

88. *Luke*, 868 F.2d at 984 (Heaney, J., dissenting). See also *Doran v. Schweiker*, 681 F.2d 605, 607 (9th Cir. 1982) (holding that a liberal construction of the requirement that a father contribute to the support of an unborn illegitimate child was appropriate); *Eisenhauer v. Mathews*, 535 F.2d 681, 686 (2d Cir. 1976) (adhering to a liberal interpretation of provisions for stepchildren).

89. 820 F.2d 1093 (9th Cir. 1987). See *supra* note 64 and accompanying text.

Weinberger,⁹⁰ in which both courts stated that benefits should not be withheld in marginal cases.⁹¹

The dissent also stated that in spite of the general requirements that the courts defer to the Secretary's findings of fact, there was no requirement that the courts had to "defer to an illogical interpretation of the statute."⁹² The dissent further asserted that there was no need to deny benefits in close cases simply because the Secretary feared fraudulent claims.⁹³

The dissent specifically addressed *McMillian* upon which the majority had relied heavily.⁹⁴ The dissent pointed out that in *McMillian* the United States Court of Appeals for the Fourth Circuit had recognized that the same interpretation later adopted by the Secretary and the Eighth Circuit was illogical and would not survive judicial scrutiny.⁹⁵ The dissent pointed out that, in addition to the statement relied upon by the majority, the *McMillian* court had also stated that:

We admit, but need not in this case authoritatively accept, the force of claimant's contention that in logic section 416(h)(3)(C) should not be construed to impose on claimants invoking either subparagraph (C)(i) or (C)(ii) any further independent requirement of proving biological parentage, i.e., that the requirements for establishing deemed dependent child status are fully stated within the two subparagraphs as free-standing independent alternatives.⁹⁶

90. 521 F.2d 656 (2d Cir. 1975). See *infra* notes 148-58.

91. *Smith*, 707 F.2d at 1095; *Adams*, 521 F.2d at 659.

92. *Luke*, 868 F.2d at 984 (Heaney, J., dissenting).

93. *Id.* See *NLRB v. Brown*, 380 U.S. 278, 291 (1965) (proclaiming that courts should not rubber-stamp administrative holdings which were not consistent with the statutory mandate or which frustrated the underlying statutory policy); *Mathews v. Lucas*, 427 U.S. 495, 507 (1976) (stating that the court did not have to agree with the Secretary's interpretation of a statute if that interpretation contradicted the legislative history and structure of the statute); *Cabell v. Markham*, 148 F.2d 737, 739 (2d Cir. 1945) *aff'd*, 326 U.S. 404 (1945) (stating that it was the goal of the courts to effectuate the underlying purpose of legislation).

94. *Luke*, 868 F.2d at 981-82 (Heaney, J., dissenting).

95. *Id.* (citing *McMillian*, 759 F.2d at 1151). The *McMillian* court further noted that:

[i]n summary, claimant points out the redundancy and internal inconsistency of a reading [of section 416(h)(3)] that requires an applicant to prove biological parentage as a threshold predicate and then *in addition* to prove parental acknowledgment . . . , or decrees of other courts establishing parentage . . . ; and the incomprehensibility of a reading that requires an applicant to prove biological parentage as a threshold predicate and then *in addition* to "show by evidence satisfactory to the Secretary [that the insured was] the father of the applicant, . . ."

McMillian, 759 F.2d at 1151 n.2.

96. *Luke*, 868 F.2d at 982. (Heaney, J., dissenting) (quoting *McMillian*, 759 F.2d at 1151).

The dissent further noted that in *Patterson v. Bowen*⁹⁷ the Fourth Circuit adopted this position.⁹⁸ The dissent in *Luke* surmised that while the Fourth Circuit had acknowledged that paternity was a required ultimate fact, that fact was established when the claimant produced an acknowledged statement or a court order of parentage.⁹⁹ Therefore, the dissent asserted that “[n]o additional threshold showing of biological parentage [was] required.”¹⁰⁰

In further support of this interpretation, the dissent noted that prior to 1965 a child could only receive survivor child benefits in the event he or she was able to inherit from the parent under the law of the state in which the parent was domiciled.¹⁰¹ Because the laws of the states varied, benefits were inequitably distributed.¹⁰² This inequitable distribution prompted the changes in section 416 to allow an illegitimate child to receive benefits under the provisions of (h)(3)(C)(i) and (h)(3)(C)(ii).¹⁰³

The dissent finally addressed the lack of conclusive evidence that Groth could not have been Scott's father given the fact that the medical records detailing the supposed vasectomy had burned, that the doctor who had allegedly performed the operation was deceased, and that the semen test performed several months after Luke became pregnant did not conclusively establish that Groth did not father Scott.¹⁰⁴ In light of these factors, the dissent stated that a determination of whether a written acknowledgment of paternity may be rebutted was not before the court.¹⁰⁵ Thus, based upon the purpose of the social security legislation, the requirement that the legislation be liberally construed, and the language of section 416(h)(3)(C)(i) and (ii), coupled with the lack of conclusive evidence that Groth was not Scott's father, the dissent concluded that Scott should not have been

97. 839 F.2d 221 (4th Cir. 1988) (holding that a voluntary acknowledgment of paternity is sufficient to vest benefits in a child claimant).

98. *Id.* at 224.

99. *Luke*, 868 F.2d at 982 (Heaney, J., dissenting) (citing *Vance v. Heckler*, 757 F.2d 1324, 1328 (D.C. Cir. 1985)).

100. *Id.*

101. *Id.*

102. S. REP. NO. 404, 89th Cong., 1st Sess. 8, reprinted in 1965 U.S. CODE CONG. & ADMIN. NEWS 1943, 2050.

103. H. REP. NO. 6675, 89th Cong., 1st Sess. 7, reprinted in 1965 U.S. CODE CONG. & ADMIN. NEWS 305, 448. These changes were interpreted by the United States Supreme Court in *Mathews*, 427 U.S. at 509. The Court noted that the provisions of sections 416(h)(3)(C)(i) and (C)(ii) were basically administrative short-cuts which eliminated the necessity of a case by case determination of dependency under the circumstances delineated in the statute. *Id.* at 509.

104. *Luke*, 868 F.2d at 983 (Heaney, J., dissenting). See also J. SCIARRA, *supra* note 82, at 12.

105. *Luke*, 868 F.2d at 983.

denied social security surviving child benefits.¹⁰⁶

BACKGROUND

SOCIAL SECURITY ACT PRIOR TO 1965

The Social Security Act of 1935¹⁰⁷ (Act), which was enacted as part of President Franklin D. Roosevelt's New Deal program, was intended as "a broad program of social insurance, on which working people could rely to provide for themselves and their dependents in old age."¹⁰⁸ This protection also extends to children who have lost the actual or expected support of an insured parent because of disability or death.¹⁰⁹ The Act, which is remedial legislation designed as a national insurance program, has been construed liberally in accord with its humanitarian aims.¹¹⁰ As such, the courts have often indicated that they are not to withhold benefits in marginal cases.¹¹¹

As first enacted, the Act denied a child the payment of benefits unless the child was able to inherit intestate personal property under the law of the state in which his or her parent was domiciled at the time of the parent's death.¹¹² Application of the individual state intestacy laws led to inconsistency because some states required that to inherit the personal property of his or her father, a child had to first establish that a biological relationship existed.¹¹³

106. *Id.* at 984 (Heaney, J., dissenting).

107. 42 U.S.C. § 301 (1988).

108. *Holmes v. Weinberger*, 423 F. Supp. 149 (E.D.N.Y. 1976) (describing in detail the purpose of the Social Security Act of 1935). *See also* L. TODD & M. CURTIS, *RISE OF THE AMERICAN NATION* 600-10 (1977).

109. *See Jimenez v. Weinberger*, 417 U.S. 628, 634 (1974) (stating that the goal of the Social Security provisions pertaining to child benefits was "to provide support for dependents of a disabled wage earner"); *Suarez v. Secretary of Health & Human Servs.*, 755 F.2d 1, 3 (1st Cir. 1985), *cert. denied*, 474 U.S. 844 (1985) (ruling that the child benefit provisions of the Act "were enacted to protect any child financially dependent on an insured wage earner in the event that the wage earner becomes unable to continue providing for the child's support"); *Doran v. Schweiker*, 681 F.2d 605, 607 (9th Cir. 1982) (holding that the amount which constitutes parental support was determined by the child's needs and that the primary purpose of the social security scheme was to provide support for dependents).

110. *Doran*, 681 F.2d at 607. In *Doran*, the court construed the social security requirements liberally by ruling that minimal parental contributions to an unborn illegitimate child's support were sufficient to entitle the claimant to survival benefits. *Id.* *See Eisenhauer v. Mathews*, 535 F.2d 681, 686 (2d Cir. 1976) (holding that stepchildren were entitled to social security benefits); *Holmes*, 423 F. Supp. at 154 (applying a liberal construction of the terms of 42 U.S.C. § 402, the provision for child insurance benefits).

111. *Holmes*, 423 F. Supp. at 154.

112. S. REP. NO. 404, 89th Cong., 1st Sess. 8, *reprinted in* 1965 U.S. CODE CONG. & ADMIN. NEWS 1943, 2050, 2049 (discussing 42 U.S.C. § 416(h)(2)(A)).

113. *See Allen v. Califano*, 452 F. Supp. 205, 212 (D. Md. 1978) (interpreting the intestacy law of the state of Maryland and stating that the necessary factual determinations would include 1) whether the child was the biological child of the deceased and

The Nebraska Supreme Court's interpretation of the Nebraska intestacy law in *In re Oakley's Estate*,¹¹⁴ requiring proof of a biological relationship to entitle an illegitimate child to inherit,¹¹⁵ is typical of other states' interpretations of their intestacy laws.¹¹⁶ In *In re Oakley's Estate*, the court held that Doris Oakley, the claimant, would have to meet three requirements to inherit from the intestate.¹¹⁷ The court announced that one claiming heirship under an intestacy statute had to prove that she was illegitimate, that the alleged father was the biological father, and that the father accepted the claimant as his child.¹¹⁸

Georgie McBride and Hugh N. Wheelock were married and living in LaPlatte, Nebraska, in 1899, when Wheelock traveled to Omaha, Nebraska, and brought home a baby girl whom they named Doris.¹¹⁹ Subsequently, Yancy Oakley, the intestate, who was acquainted with the family, convinced McBride to leave Wheelock and live with him, which she did, taking Doris with her.¹²⁰ Thereafter, Oakley held Doris out as his daughter, providing for all of her expenses including school tuition.¹²¹ However, the record was devoid of any evidence indicating that McBride and Oakley were ever married or that Oakley ever adopted Doris.¹²²

The court denied Doris' petition to inherit the intestate personal property of Oakley.¹²³ The court noted that, notwithstanding Oakley's recognition of Doris as his daughter, under the Nebraska statute, Doris had no right to inherit from Oakley unless she could prove she was his illegitimate child.¹²⁴

The case of *In re Oakley's Estate* demonstrates the specificity of

2) whether the deceased had openly acknowledged the child); *Thomas v. Thomas*, 200 Miss. 96, 25 So. 2d 710, 710 (1946) (denying benefits to a surviving child on the grounds that the "child was not in fact the biological child of the deceased"); *In re Richard M.*, 14 Cal. 3d 783, 794, 537 P.2d 363, 369, 122 Cal. Rptr. 531, 537 (1975) (stating that "one seeking to establish legitimation of illegitimate child bears burden of proving (1) illegitimacy, (2) *paternity*, (3) public acknowledgment by father, (4) reception into father's family, and (5) treatment of child by father as legitimate") (emphasis added).

114. 149 Neb. 556, 562, 31 N.W.2d 557, 560 (1948) (interpreting statute which was later repealed).

115. *Id.*

116. *See supra* note 113 and accompanying text.

117. *In re Oakley's Estate*, 149 Neb. at 562, 31 N.W.2d at 558.

118. *Id.*

119. *Id.* at 558-59, 31 N.W.2d at 559.

120. *Id.* at 559, 31 N.W.2d at 559.

121. *Id.*

122. *Id.* at 559, 31 N.W.2d at 560.

123. *Id.* at 565, 31 N.W.2d at 562.

124. *Id.* at 565, 31 N.W.2d at 562. *See Application of G.K.*, 248 N.W.2d 380, 385 (1976) (Zastrow, J., dissenting). In *Application of G.K.*, the dissent recognized that although the "natural father" of the child had not married the mother of his son, and had in fact married another woman and moved to another state, he would still have

the individual state inheritance laws¹²⁵ which were an illegitimate child's only vehicle to recover social security benefits under the Act as originally adopted.¹²⁶ According to this scheme, the Secretary was required to apply the particular state law to determine when an award of benefits was appropriate.¹²⁷

The decision of the Secretary to award or deny benefits was granted deference on judicial review if it was supported by "substantial evidence on the record as a whole."¹²⁸ This deferential standard of review applied only to findings of fact, however, and no similar presumption of validity attached to the Secretary's conclusions of law.¹²⁹ In those cases in which a federal district court judge interpreted the law of the state in which the court sat, that interpretation was given extreme deference on appeal.¹³⁰ Because of the lack of uniformity in the state intestacy laws, the administration of child social security benefits based solely on the application of state laws resulted in disparate treatment of children.¹³¹

1965 AMENDMENTS TO THE SOCIAL SECURITY ACT

The application of individual state laws and the variance in those laws led to inconsistency in the award of child survivor social security benefits and prompted Congress to amend the Act by adding the alternative provision of 42 U.S.C. § 416(h)(3)(C).¹³² As amended, the Act still permits a child to receive benefits if the child would be entitled to inherit the parent's intestate personal property under the applicable state law.¹³³ In the alternative, the child may receive benefits if:

legal rights to obtain custody of his illegitimate son in the event the mother was deemed unfit to care for him. *Id.*

125. See *supra* notes 114-23 and accompanying text.

126. See *supra* notes 112 & 113 and accompanying text.

127. See *supra* note 112 and accompanying text.

128. See *supra* note 63 and accompanying text.

129. See *supra* note 64 and accompanying text.

130. *Hazen v. Pasley*, 768 F.2d 226, 228 (8th Cir. 1985) (citations omitted).

131. See *infra* note 132 and accompanying text.

132. S. REP. NO. 404, 89th Cong., 1st Sess. 8, reprinted in 1965 U.S. CODE CONG. & ADMIN. NEWS 2050. The legislative history of section 416(h)(3) states that:

[t]he committee believes that in a national program that is intended to pay benefits to replace the support lost by a child when his father retires, dies, or becomes disabled, whether a child gets benefits should not depend on whether he can inherit his father's intestate personal property under the laws of the State in which his father happens to live. The committee has therefore included in the bill a provision under which benefits would be paid to a child on the earnings record of his father, even though the child cannot inherit the father's intestate property, if the father had acknowledged the child in writing

Id. See 42 U.S.C. § 416(h)(3)(C)(i)(I) (1988) (providing statutory alternative).

133. 42 U.S.C. § 416(h)(2)(A) (1988).

the father had acknowledged the child in writing, had been ordered by a court to contribute to the child's support, had been judicially decreed to be the child's father, or is shown by evidence satisfactory to the Secretary of Health, Education and Welfare to be the child's father and was living with or contributing to the support of the child.¹³⁴

The term "child" is defined in the Act as "the child or legally adopted child of an individual, . . ." ¹³⁵ or the insured's "natural child."¹³⁶ In addition, the Supreme Court offered some assistance in interpreting the amendments found in 42 U.S.C. § 416(h)(3) in *Mathews v. Lucas*.¹³⁷ Robert Cuffee lived with Belmire Lucas from 1948 through 1966, but they never married.¹³⁸ Before they separated they had two children, Ruby, born in 1953, and Darin, born in 1960.¹³⁹ Cuffee died two years after the separation without ever having been decreed by a court to have been the children's father or ever having acknowledged paternity of the children in writing.¹⁴⁰ Because the children were unable to prove that they were dependent upon Cuffee at the time of his death and were unable to meet any of the statutory alternatives of section 416(h)(3)(C) which would have entitled them to a presumption of dependency, they were denied social security survivor benefits.¹⁴¹

In *Mathews*, the primary issue before the court was the constitutionality of section 416(h)(3)(C)(ii), which requires that to receive benefits, an illegitimate child must prove dependency, but does not require a legitimate child to meet that burden.¹⁴² The Court upheld the provision on the grounds that it did not impermissibly discriminate against illegitimate children because they were more likely not to be dependent on their fathers than their legitimate counterparts.¹⁴³ The *Mathews* Court also adopted the assessment of another court in addressing the validity of a written acknowledgment of paternity by:

134. S. REP. NO. 404, 89th Cong., 1st Sess. 8, reprinted in 1965 U.S. CODE CONG. & ADMIN. NEWS 2050. See 42 U.S.C. § (h)(3)(C)(i), and (ii) (1988).

135. 42 U.S.C. § 416(e) (1988). This definition does not explain how that relationship is to be proved. See *id.*

136. 20 C.F.R. § 404.355 (1988). This section fails to explain how the relationship of "natural child" may be established. See *id.*

137. 427 U.S. 495, 498 (1976).

138. *Id.* at 497.

139. *Id.*

140. *Id.*

141. *Id.* at 500-01.

142. *Id.* at 497.

143. *Id.* at 509. The Court addressed the standard of review and concluded that the classifications present in *Mathews* did not warrant strict scrutiny. *Id.* The Court concluded "that the statutory classifications [were] permissible . . . because they [were] reasonably related to the likelihood of dependency at death." *Id.*

Conceding that a written acknowledgment lacks the imprimatur of a judicial proceeding, it too establishes the basis for a rational presumption [of dependency]. Men do not customarily affirm in writing their responsibility for an illegitimate child unless the child is theirs and a man who has acknowledged a child is more likely to provide it support than [sic] one who does not.¹⁴⁴

In dicta, the Court interpreted the proof requirements of section 416(h)(3)(C)(i) as administrative short cuts which eliminate the necessity of a case by case review of the child's dependency or legitimacy when one of the statutory requirements of section 416(h)(3)(C)(i) is met.¹⁴⁵

UNITED STATES CIRCUIT COURTS OF APPEALS INTERPRETATIONS OF 42 U.S.C. § 416(h)(3)(C)(i)

Several of the circuit courts have adopted the dicta in *Mathews* interpreting section 416(h)(3)(C)(i) as creating a statutory presumption of paternity as well as dependency.¹⁴⁶ In reaching this decision, the courts have relied on the language of the Act and its legislative history.¹⁴⁷

The United States Court of Appeals for the Second Circuit discussed the entitlement provision of section 416(h)(3)(C) in *Adams v. Weinberger*.¹⁴⁸ In *Adams*, the wage earner, Peter McGinn, began residing with Rossini Adams in spite of the fact that McGinn was married to someone else and had four children.¹⁴⁹ Adams became pregnant and continued to reside with McGinn for several months during which time he provided her with approximately four hundred dollars and agreed to pay her hospital bills.¹⁵⁰ Prior to the birth of the baby, Adams moved out of the apartment but continued to visit McGinn regularly.¹⁵¹ Before the baby was born, McGinn was murdered.¹⁵² Adams filed a request with the Secretary for child insur-

144. *Id.* at 514 (quoting *Norton v. Weinberger*, 364 F. Supp. 1117, 1128 (D. Md. 1973)).

145. *Id.* at 509. The Court indicated that if a child met the statutory requirements of providing a written acknowledgment of paternity, a court order requiring the wage earner to pay child support, or a court order establishing paternity, the child would be "deemed legitimate" even if the parents were not and never had been married. *Id.* See 42 U.S.C. § 416(h)(3)(C)(i) (1988).

146. See *infra* notes 148-74.

147. See *infra* notes 148-74.

148. 521 F.2d 656 (2d Cir. 1975).

149. *Id.* at 658.

150. *Id.* at 660.

151. *Id.* at 658.

152. *Id.*

ance benefits for her child, Devlin Adams.¹⁵³ The Secretary denied the claim on the basis that the wage earner was not living with or contributing to the child's support at the time of the death.¹⁵⁴

In response to the Secretary's arguments, the Second Circuit addressed the fact that those illegitimate children who are legitimated under one of the provisions of section 416(h)(3)(C)(i) need not otherwise prove either paternity or dependency.¹⁵⁵ The court recognized that those illegitimate children who could not provide a written acknowledgment of paternity or a court order establishing paternity had to prove to the Secretary that they were both dependent on and biologically related to the wage earner.¹⁵⁶ Moreover, the court held that paternity and dependency would be presumed if the wage earner had either "(1) acknowledged paternity of the child in writing, (2) had been decreed by a court to be the father of the child, or (3) had been ordered by a court to contribute to the support of the child because the child was his son or daughter."¹⁵⁷ The Second Circuit held that the support provided by McGinn before Devlin's birth was commensurate with Devlin's needs at the time and was sufficient to qualify Devlin for benefits under section 416(h)(3)(C)(ii).¹⁵⁸

The United States Court of Appeals for the Fourth Circuit first discussed the entitlement provisions of sections 416(h)(3)(C)(i) and (ii) in *McMillian ex rel. McMillian v. Heckler*.¹⁵⁹ Wayne M. McMillian was born to Annie M. McMillian who was married to James McMillian, but was having an extramarital affair with Willie M. Beatty who was also married.¹⁶⁰ There was substantial evidence that Beatty and others believed Wayne was Beatty's son.¹⁶¹ However, North Carolina recognizes a common-law presumption of legitimacy of a child born in wedlock.¹⁶² Consequently, Wayne's birth certificate listed James McMillian as his father and a court had ordered McMillian to pay child support for Wayne.¹⁶³

The Fourth Circuit affirmed the Secretary's denial of benefits for Wayne.¹⁶⁴ The court held that the evidence that Beatty was Wayne's father was insufficient to overcome the evidence to the con-

153. *Id.*

154. *Id.* at 657.

155. *Id.* at 658.

156. *Id.*

157. *Id.* at 658-59 (citing 42 U.S.C. § 416(h)(3)(C)(i) (1988)).

158. *Id.* at 661.

159. 759 F.2d 1147 (4th Cir. 1985).

160. *Id.* at 1148.

161. *Id.*

162. *Id.*

163. *Id.* at 1148-49.

164. *Id.* at 1154.

trary and the statutory presumption that Wayne was the legitimate child of James and Annie McMillian.¹⁶⁵ Additionally, the Fourth Circuit discussed in dicta the alternative provisions of sections 416(h)(3)(C)(i) and (ii).¹⁶⁶ The court stated that although it was not necessary to decide the issue of whether a threshold showing of paternity was necessary to recover benefits under the Act, the alternative sections of (h)(3)(C)(i) and (ii) should not be construed as imposing on claimants additional biological relationship requirements beyond those specifically stated in each of the two independent subparagraphs of the statute.¹⁶⁷

The Fourth Circuit adopted this reasoning in *Patterson v. Bowen*.¹⁶⁸ In *Patterson*, the Secretary awarded benefits to Travis Z. White drawn on the social security account of Woodrow W. Patterson, a man who was over seventy years old, based solely upon Patterson's written acknowledgment of paternity.¹⁶⁹ In spite of the facts that Travis' mother, Julie White, named three gentlemen as Travis' possible father and Patterson's advanced age, the Fourth Circuit held that the "child need not be [the] biological child of the wage earner in fact, but the wage earner's voluntary acknowledgment of paternity would be sufficient to render him eligible for [social security] insurance benefits."¹⁷⁰ The court also noted that the construction of section 416(h)(3)(C)(i)(I) suggested by the Secretary, which would require an illegitimate child to first establish paternity in spite of having a written acknowledgment, was "both redundant and inconsistent" as well as "contrary to any common sense reading of the statute."¹⁷¹

The United States Court of Appeals for the District of Columbia reached the same conclusion in *Vance v. Heckler*.¹⁷² In *Vance*, the court awarded the child, Reginald Ham, benefits on the social security account of Willie Wilkins based solely upon a letter written by Wilkins to a third party, mentioning that Wilkins would take care of "his son."¹⁷³ The court noted that if one of the provisions of section 416(h)(3)(C)(i) had been met, the child would be "deemed dependent" and therefore entitled to benefits.¹⁷⁴

165. *Id.*

166. *Id.* at 1151.

167. *Id.*

168. 839 F.2d 221 (4th Cir. 1988).

169. *Id.* at 222.

170. *Id.*

171. *Id.* at 224.

172. 757 F.2d 1324 (D.C. Cir. 1985).

173. *Id.* at 1328.

174. *Id.* at 1325.

UNITED STATES CIRCUIT COURTS OF APPEALS INTERPRETATIONS OF
42 U.S.C. § 416(h)(3)(C)(ii)

The circuits that have addressed the provisions of section 416(h)(3)(C)(i) have held that it is unnecessary for a claimant to meet any threshold proof of paternity if one of the provisions of subsection (i) is met.¹⁷⁵ However, in accord with the language of section 416(h)(3)(C)(ii), several of the circuits have interpreted that subsection to require that a child make a threshold showing of paternity.¹⁷⁶ In *Sherrill ex rel Sherrill v. Bowen*,¹⁷⁷ the Eighth Circuit denied Lamarko Sherrill survivor benefits because he failed to meet any of the statutory provisions of subsection (i) and he was unable to prove a biological relationship with the deceased as required under subsection (ii).¹⁷⁸

Christine Sherrill applied for social security survivor benefits for her son Lamarko after the death of the wage earner, Roosevelt Robinson.¹⁷⁹ Sherrill and Robinson were romantically involved from 1964 to 1972.¹⁸⁰ Sherrill testified that Robinson was her only sexual partner during that time.¹⁸¹ However, when Lamarko Sherrill was born on June 26, 1971, Sherrill did not name a father on his birth certificate.¹⁸² After filing for social security benefits for Lamarko, Sherrill maintained that Robinson bought food and toys for Lamarko, and she also provided a notarized statement from Robinson's mother, Bobbie Thompson, that Robinson acknowledged Lamarko as his son and often brought Lamarko to her home to visit.¹⁸³

In spite of this evidence, the Eighth Circuit held that Lamarko was unable to meet any of the statutory alternatives of section 416(h)(3)(C)(i).¹⁸⁴ Further, the court noted he was not entitled to receive benefits under section 416(h)(3)(C)(ii) because he was unable to prove he was living with or dependant on Robinson at the time of his death, nor was he able to provide the necessary proof of a biological

175. See *supra* notes 148-74.

176. See *Imani ex rel. Hayes v. Heckler*, 797 F.2d 508, 512 (7th Cir. 1986), *cert. denied*, 479 U.S. 988 (1986) (holding that a child would have to prove a biological relationship with the wage earner before recovering benefits under § 416(h)(3)(C)(ii)); *Greer ex rel. Greer v. Heckler*, 756 F.2d 794, 798 (10th Cir. 1985) (requiring claimant to prove a biological relationship to recover benefits under subsection (ii)).

177. 835 F.2d 166, 169 (8th Cir. 1987).

178. *Id.* at 168-69.

179. *Id.* at 167.

180. *Id.* Celloustone Harris, Robinson's wife at the time of his death in 1972, testified that she and Robinson were married in 1969 and had two children. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.* at 168.

relationship with Robinson.¹⁸⁵ Thus, in interpreting the provisions of 42 U.S.C. § 416(h)(3)(C)(i) and (ii), the court's have consistently held that a threshold showing of paternity is necessary for a child to receive benefits under subsection (ii)¹⁸⁶ but not under subsection (i).¹⁸⁷

ANALYSIS

In *Luke v. Bowen*,¹⁸⁸ Jeanette Luke had filed for social security survivor child benefits on behalf of her minor son Scott Luke, based on the earnings record of Gary Groth.¹⁸⁹ The possible provisions under which Scott could have potentially received benefits were sections 416(h)(2)(A) and (h)(3)(C) of Title 42 of the United States Code.¹⁹⁰ The Secretary of Health and Human Services (Secretary) and the district court had both determined that Scott would not have been able to inherit under the intestacy law of the state of South Dakota as was required to receive benefits under section 416(h)(2)(A).¹⁹¹ In addition, although Scott was able to provide several written acknowledgments of paternity signed by Groth, as provided in section 416(h)(3)(C)(i)(I), the Secretary had denied Scott benefits based on evidence that Groth had previously undergone a vasectomy and was sterile.¹⁹² These holdings were affirmed by the United States Court of Appeals for the Eighth Circuit.¹⁹³

It is well recognized that a district court interpretation of the law of the state in which it sits will be given great deference on appeal.¹⁹⁴ Given this deferential standard, the decision of the United States District Court for the District of South Dakota in *Luke* that proof of a biological relationship is required under South Dakota law is undisputed.¹⁹⁵ The Eighth Circuit's deference to the district court's determination of South Dakota law was appropriate in regard to the provisions of section 416(h)(2)(A).¹⁹⁶ However, the 1965 amendments to section 416(h)(3) were specifically designed to address and offset the disparities which occurred in the award of social security benefits when a child's only means of recovering benefits was if the child was

185. *Id.* at 169.

186. *See supra* notes 176-85.

187. *See supra* notes 148-74.

188. 666 F. Supp. 1340 (D.S.D. 1987).

189. *Id.* at 1341.

190. *Id.* at 1343. *See* 42 U.S.C. §§ 416(h)(2)(A), (h)(3)(C) (1988).

191. *Id.* at 1343-44.

192. *Id.* at 1342, 1345.

193. *Luke v. Bowen*, 868 F.2d 974, 980 (8th Cir. 1989).

194. *See supra* note 63 and accompanying text.

195. *Luke*, 666 F. Supp. at 1343-44. *See supra* note 63 and accompanying text.

196. *See supra* notes 112-24 and accompanying text.

able to qualify under the state's intestacy statute.¹⁹⁷

INTERPRETATION OF FEDERAL LAW

It was the Secretary's contention, as adopted by the Eighth Circuit in *Luke*,¹⁹⁸ that the language of section 416(h)(3)(C)(i)(I), stating that "the individual acknowledges in writing that the applicant is his or her *son or daughter*,"¹⁹⁹ created a threshold requirement that the applicant actually prove paternity in addition to furnishing a written acknowledgment of paternity.²⁰⁰ According to this interpretation, without evidence of the biological relationship, any written acknowledgment or court order declaring paternity would be insufficient to vest benefits in the child.²⁰¹

In supporting this interpretation of the Social Security Act, the *Luke* majority first discussed the language of section 416(e).²⁰² The language of that section provided only a definition of the term "child" as the "child or legally adopted child of an individual,"²⁰³ but in no way described the necessity of proving a biological relationship in addition to providing a written paternity acknowledgment.²⁰⁴

The second provision cited by the majority in support of its decision to deny Scott benefits was section 404.355 of Title 20 of the Code of Federal Regulations.²⁰⁵ That section provides that, in order to be eligible for benefits, "the claimant must be the 'natural child' of the insured."²⁰⁶ However, this section fails to provide standards for proving that relationship.²⁰⁷ In addition, the Secretary's interpretation of the regulation need not be accepted in the event it contradicts a logical statutory reading.²⁰⁸

The court also supported its decision with the legislative history of section 416(h)(3).²⁰⁹ However, the legislative history of this section merely explains the lawmakers frustration with the inconsistencies of the state intestacy laws and the legislator's desire to provide an alternative entitlement provision.²¹⁰ There is nothing in this lan-

197. See *supra* notes 132 and 134 and accompanying text.

198. *Luke*, 868 F.2d at 980.

199. 42 U.S.C. § 416(h)(3)(C)(i)(I) (1988) (emphasis added).

200. *Luke*, 868 F.2d at 978.

201. *Id.*

202. *Id.*

203. 42 U.S.C. § 416(e)(1) (1988).

204. *Id.*

205. *Luke*, 868 F.2d at 978. See 20 C.F.R. § 404.355 (1988).

206. 20 C.F.R. § 404.355 (1988).

207. See *id.* See also *Luke*, 868 F.2d at 981 (Heaney, J., dissenting).

208. See *supra* note 92 and accompanying text.

209. *Luke*, 868 F.2d 978. See S. REP. NO. 404, 89th Cong., 1st Sess. 8, reprinted in 1965 U.S. CODE CONG. & ADMIN. NEWS 1943, 2050.

210. See *supra* note 59 and accompanying text.

guage to indicate that the legislature intended to mandate that a child provide a written acknowledgment of paternity in addition to biological evidence of paternity.²¹¹

In support of the conclusion that Scott should not have been denied social security benefits, the dissent in *Luke* noted that the critical question at issue was whether section 416(h)(3)(C)(i) required proof of paternity in addition to production of a written paternity acknowledgment from the wage earner.²¹² The dissent further noted that the Secretary's interpretation of the statute was illogical and frustrated the underlying statutory scheme of social security benefits.²¹³ The dissent concluded that "[a] more rational reading of the statute, consistent with the purpose of the Social Security Act, is this: if a claimant has a valid written acknowledgment of parentage, this evidence constitutes a statutory presumption of legitimacy for the purpose of the surviving children's benefits provisions."²¹⁴ This statutory construction is consistent with a number of similar interpretations of section 416(h)(3)(C)(i) advanced by other circuit courts.²¹⁵ Consequently, because the Secretary was unable to conclusively establish that Groth was not Scott's biological father,²¹⁶ and in light of the fact that the courts should liberally construe the award of social security benefits in marginal cases, Scott should have been awarded benefits.²¹⁷

The Eighth Circuit's interpretation of *McMillian ex rel. McMillian v. Heckler*²¹⁸ does not support the *Luke* ruling when one acknowledges the portion of the *McMillian* opinion which the court failed to discuss²¹⁹ and the subsequent history of the case in *Patterson v. Bowen*.²²⁰ The *Luke* majority cited the portion of *McMillian* in which the court stated that paternity was an ultimate fact to be proven²²¹ but ignored the portion of the opinion in which the *McMillian* court stated that the ultimate fact would be proven once one of the statutory alternatives of section 416(h)(3)(C) was met.²²² In *Patterson*, the court explicitly rejected the threshold requirement of establishing paternity in addition to meeting one of the statutory

211. See *supra* note 59 and accompanying text.

212. *Luke*, 868 F.2d at 980 (Heaney, J., dissenting).

213. *Id.* See *supra* notes 85-91 and accompanying text.

214. *Luke*, 868 F.2d at 980 (Heaney, J., dissenting).

215. See *supra* notes 148-74 and accompanying text.

216. *Luke*, 868 F.2d at 979.

217. See *supra* notes 85-91 and accompanying text.

218. 759 F.2d 1147 (4th Cir. 1985).

219. See *supra* notes 159-67 and accompanying text.

220. 839 F.2d 221 (4th Cir. 1988).

221. *Luke*, 868 F.2d at 979 (quoting *McMillian*, 759 F.2d 1153).

222. *McMillian*, 759 F.2d at 1151.

requirements of section 416(h)(3)(C)(i).²²³ The United States Court of Appeals for the Fourth Circuit thus recognized that, while paternity was an ultimate fact to be proved, it was so proved when one produced an acknowledgment of paternity in writing or a court order of parentage.²²⁴

This interpretation was also recognized by the United States Court of Appeals for the District of Columbia in *Vance v. Heckler*.²²⁵ In *Vance*, benefits were awarded based solely upon an acknowledgment of paternity in a letter written to a third party referring to the claimant.²²⁶ This same interpretation was adopted by the United States Court of Appeals for the Second Circuit in *Adams v. Weinberger*.²²⁷ The various decisions clearly reject the two-part test adopted by the *Luke* court which required a claimant to prove a biological relationship and to produce a written acknowledgment of paternity in order to receive social security benefits.²²⁸

The unpersuasive reasoning of the *Luke* decision necessitates an inquiry into whether the court's interpretation of the statute is logical and consistent with the purpose of the legislation.²²⁹ It is clear that under the Eighth Circuit's interpretation, the claimant is essentially required to prove parentage by "evidence satisfactory to the Secretary" under all circumstances,²³⁰ a result which is clearly contrary to the statutory language and the legislative intent of the amendments.²³¹

Further, the decisions cited by the court in support of the requirement that a biological relationship be proved²³² do not refer to any requirement under section 416(h)(3)(C)(i), but rather refer to that requirement established by the very language of the statute under section 416(h)(3)(C)(ii).²³³ The different results are appropriate because the language of subsection (ii) specifically states that a child who does not meet the provisions of subsection (i) may still receive benefits if "such insured individual is shown by evidence satisfactory to the Secretary to have been the mother or father of the applicant. . . ." ²³⁴ The language of subsection (i) does not contain a

223. *Patterson*, 839 F.2d at 224-25.

224. *Id.* at 225.

225. 757 F.2d 1324 (D.C. Cir. 1985).

226. *Id.* at 1328.

227. 521 F.2d 656 (2d Cir. 1975).

228. *See supra* notes 148-74 and accompanying text.

229. *See supra* notes 106-11 and accompanying text.

230. *Luke*, 868 F.2d at 981 (Heaney, J., dissenting). *See supra* notes 148-75 and accompanying text.

231. *See supra* note 132 and accompanying text.

232. *See supra* notes 176-85.

233. *See* 42 U.S.C. § 416(h)(3)(C)(ii) (1988).

234. *Id.*

paternity requirement,²³⁵ and such a requirement should not be read into the section when doing so would nullify its effect.²³⁶

CONCLUSION

As the distinguished Justice Learned Hand noted in *Cabell v. Markham*²³⁷ "[i]t is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to the meaning."²³⁸ The decision of the United States Court of Appeals for the Eighth Circuit in *Luke v. Bowen*,²³⁹ in which it denied social security benefits to Scott Luke, was clearly contrary to the purpose and intent of the Social Security Act.

In its decision to deny Scott benefits, the Eighth Circuit ignored the underlying purpose of the social security legislation and the judicially recognized requirement that the legislation be construed as broadly as possible, particularly when children are involved. In addition, the court misconstrued the legislative history of the statute, the interpretative legislation supporting the statute, and the language of the statute itself. Finally the court ignored the trend in other circuits which have addressed this same issue.

As described by Justice Heaney in his dissent, "[i]f the child has a valid written acknowledgment of parentage, and the Secretary cannot rebut the statutory presumption of legitimacy, that child should receive the financial protection of social security benefits."²⁴⁰ The lack of conclusive evidence showing the impossibility of paternity in this case, makes the decision of the Eighth Circuit to deny Social Security benefits to Scott Luke clearly incorrect.

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235. See 42 U.S.C. § 416(h)(3)(C)(i) (1988).

236. See *supra* note 209 and accompanying text.

237. 148 F.2d 737 (2d Cir. 1945).

238. *Id.* at 739.

239. 868 F.2d 978 (8th Cir. 1989).

240. *Id.* at 984 (Heaney, J, dissenting).