

STATE OF MICHIGAN  
COURT OF APPEALS

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AUTUMN DANIELLE PALMER, by her next  
friend, CINDY MILLER,

Plaintiff-Appellant,

v

No. 112781

WEST AMERICAN INSURANCE,

Defendant-Appellee.

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Before: Gribbs, P.J., and Shepherd and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals by right from the circuit court order granting defendant's motion for summary disposition, MCR 2.116(C)(10), in this action to recover no-fault survivor loss benefits pursuant to MCL 500.3108; MSA 24.13108, and MCL 500.3110; MSA 24.13110. At issue is whether an illegitimate posthumous child is entitled to survivor loss benefits under the no-fault act.

On December 31, 1984, 17-year-old David S. Palmer (decedent) was killed in an automobile accident. At the time of the accident, decedent was enlisted in the Marine Corps under the delayed entry program and was on inactive reserve status.

On August 6, 1985, Autumn Palmer (plaintiff) was born. Plaintiff alleges that decedent was her father, that he had acknowledged paternity of her prior to his death and that he had made plans to marry her mother, Cindy Miller. Defendant does not contest paternity at this time.

Plaintiff claimed entitlement to no-fault survivor loss benefits under MCL 500.3110; MSA 24.13110. Defendant denied plaintiff's claim, arguing that a posthumous child does not qualify as a dependent under the no-fault act. The trial court agreed and granted defendant's motion for summary disposition. We reverse and remand.

MCL 500.3110; MSA 24.13110 provides in pertinent part:

(1) The following persons are conclusively presumed to be dependents of a deceased person:

\* \* \*

(c) A child while under the age of 18 years, or over that age but physically or mentally incapacitated from earning, is dependent on the parent with whom he lives or from whom he receives support regularly at the time of the death of the parent.

(2) In all other cases, questions of dependency and the extent of dependency shall be determined in accordance with the facts as they exist at the time of death.

In this case, the trial court ruled that plaintiff was not a dependent under §3110(1)(c) of the act because she was not physically living with or receiving support from decedent. The trial court also ruled that plaintiff was not a dependent under §3110(2) because she was not a "factual dependent" at the time of decedent's death.

Although not dispositive in this case, our Supreme Court has held that posthumous illegitimate children are entitled to survivor loss benefits under the dramshop act and a variety of other statutory provisions, including the worker's compensation act. See LaBlue v Specker, 358 Mich 558; 100 NW2d 445 (1960), and cases cited therein. It is not unreasonable to interpret similar statutory provisions in the same light. Swantek v Auto Club Ins, 118 Mich App 807, 810; 325 NW2d 588 (1982), lv den 417 Mich 995 (1983); Lenart v DAIE, 156 Mich App 669, 675; 401 NW2d 900 (1986), lv den 428 Mich 917 (1987).

We are also persuaded by the Minnesota case, Dahle v Aetna Casualty and Surety Ins Co, 352 NW2d 397 (Minn 1984). In Dahle, which concerned interpretation of a statute similar to the Michigan statute, the Supreme Court of Minnesota held that unborn children are presumed to be dependent upon their parents:

It is difficult to ignore the fact that an unborn child is in fact dependent on the family wage earner. The dependence may be indirect by virtue of biology but it does

nevertheless exist. Dahle, 352 NW2d at 400  
(emphasis in original).

We conclude that posthumous children are entitled to survivor loss benefits under the no-fault act.

The trial court also erred in concluding, in reliance on Gobler v Auto Owners Ins Co, 139 Mich App 768; 362 NW2d 881 (1984), rev'd 428 Mich 51 (1987), that plaintiff's damages were speculative in nature because decedent had not entered active military service at the time of his death. In reversing Gobler, our Supreme Court specifically stated that benefits should not be denied solely because the decedent was unemployed at the time of the fatal accident. Gobler, 428 Mich at 64. In this case, there is evidence that decedent had entered into an employment contract which required him to report for duty in June 1985. We believe plaintiff presented evidence sufficient to establish a survivors loss benefit and that summary disposition was inappropriate.

Reversed and remanded.

/s/ MARTIN M. DOCTOROFF  
/s/ John H. Shepherd  
/s/ Martin M. Doctoroff