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BIOLOGICAL FATHER ENTITLED TO HALF OF ASETS IN DECEASED DAUGHTER'S SPECIAL NEEDS TRUST

By Thomas D. Begley, Jr., Esquire

Jennifer Rogiers was born on September 30, 1983, severely handicapped as a result of a cervical cord injury doctors inflicted upon her at birth. Her mother, Rosa Rogiers, filed a malpractice claim and recovered \$2.6 million, which was placed in a special needs trust for Jennifer's benefit. On September 2, 2005, Jennifer died intestate and without children. The Superior Court of New Jersey, Appellate Division,^[1] made a careful analysis of the law and determined that Jennifer's biological father was entitled to a share of the assets remaining in the trust, even if he did not support his daughter during her lifetime. The court also held that the custodial parent, Jennifer's mother, Rosa, was not entitled to back child support.

While Jennifer was in Rosa's custody, Rosa received funds from the trust to attend to Jennifer's needs. After Jennifer died, her father, Ruben Martinez, sought half of the balance remaining in the trust as his intestate share under New Jersey intestacy laws. Rosa challenged his entitlement and claimed that she was entitled to retroactive child support, though she made no claim for child support while Jennifer was alive. On appeal, Rosa asserted that Martinez did not contribute to Jennifer's support during her lifetime and does not qualify as a parent under the New Jersey intestacy laws and, as a result, he is not entitled to any portion of Jennifer's estate. The court pointed out that order establishing the special needs trust provided that any portion of the principal and

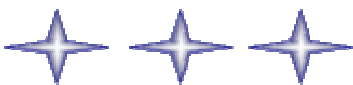
^[1] In the Matter of Jennifer Rogiers, Deceased, 396 N.J.Super. 317, 933 A.2d 971 (Oct. 23, 2007).

undistributed income of the trust that Jennifer shall not have validly appointed by her Last Will and Testament shall be paid over and distributed to the persons who would be entitled to receive the property under the laws of the State of New Jersey then in force and in the proportions prescribed by such laws as if the primary beneficiary had died intestate and a resident of the State of New Jersey. Martinez claimed he was entitled to one-half of Jennifer's intestate estate and that the probate code does not require a parent to fulfill any affirmative obligation of support or care to inherit from the child. The intestate estate of a decedent not survived by a spouse or a domestic partner, or by any descendants, passes to the surviving parents in equal shares. N.J.S.A. 3B:1-2 defines "parent" as "any person entitled to take or who would be entitled to take if the child, natural or adopted, died without a will by intestate succession from the child whose relationship in question and excludes any person who is a stepparent, resource family parent, or grandparent." The New Jersey Parentage Act,^[2] defines the parent/child relationship as "the legal relationship existing between a child and a child's natural or adoptive parents, incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

Previously, no appellate court in the State of New Jersey addressed the issue as to whether a parent's right to take from a child's estate is conditioned on the parent having supported the child during her lifetime. A 1985 trial court opinion^[3] concluded that it is not necessary that a parent support a child to inherit from the child under the intestacy laws. The trial judge, Judge Connor, found that while the mother's arguments that the father had waived his right to any portion of the estate because he abandoned the child was compelling, the plain language of the statute does not prohibit the abandoning parent from taking under the intestate laws.

With respect to the issue of retroactive child support, the court held that Rosa was able to care for Jennifer's needs with trust funds and that there was no further need to financially aid the child.

Unfortunately, this is a significant case because in many situations where a child has severe disabilities, one parent, often the father, abandons the child. In some cases, the identity of the father is not even known. In New Jersey, it is not possible to draft a special needs trust with testamentary provisions for a minor or an incapacitated adult beneficiary. In situations where there is a minor, the trust document can provide the beneficiary with right to exercise a testamentary power of appointment. Upon the minor's attaining majority, this can be done and that would be a solution to the problem. If the minor dies prior to obtaining majority or without exercising the power of appointment, or if there is an incompetent beneficiary, an unwanted and unfair result is often achieved. In some cases, adoption may be a solution. The legislature should be encouraged to revisit the probate code to provide that an abandoning parent should not be entitled to inherit through intestacy.



Announcements

^[2] N.J.S.A. 9:17-39

^[3] In re Estate of Rozet, 207 N.J.Super. 321 (Law Div. 1985).

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