

**SUPREME COURT OF FLORIDA**

KATHLEEN STEELE,

Plaintiff/Appellant/Movant,

vs.

**CASE NO.: SC22-1342**

Lower Tribunal Case No.: 20-11656

KILOLO KIJAKAZI,  
Acting Commissioner of Social Security,

Defendant/Appellee.

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**INITIAL BRIEF OF APPELLANT/MOVANT**

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## STATEMENT OF THE CASE AND FACTS

Philip and Kathleen Steele, the Appellant/Movant, were married in August of 1997. Mr. and Mrs. Steele decided to have children and in 2009 conceived their first child, born by *in vitro* fertilization. The couple then decided to have other children and Mr. Steele, before his death, provided additional sperm to the fertility clinic that had assisted with the first child's *in vitro* fertilization birth. Mr. Steele provided such sperm samples prior to his death. Mrs. Steele presented that sample for *in vitro* fertilization after her husband's death. The second child, P.S.S., is the child who was born in March 2013 by the second *in vitro* fertilization procedure, and who is now seeking Children's Insurance Benefits, or CIB, under Social Security law.

Shortly after P.S.S.'s birth, Mrs. Steele applied to the Social Security Administration for CIB, and in so doing provided a copy of his birth certificate which listed Mr. Steele as P.S.S.'s father.

The Social Security Administration denied the CIB claim. Mrs. Steele sought review of SSA's decision by an Administrative Law Judge (ALJ) who denied such claim. [AR, p. 11]<sup>1</sup>

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<sup>1</sup>This case was previously in the U.S. District Court in Tampa where the record was developed. Reference to pleadings will refer to volume and docket number in the following manner: V.x, D.x, p. x. References to the administrative record in the Exhibit folder will be referred to administrative record and page number in the following manner: AR., p. x. The

The matter was referred to the Appeals Council who affirmed the ALJ decision. A Complaint was then filed in the U.S. District Court in Tampa for review of such decision in October of 2018. [V.1, D.1] The U.S. Magistrate Judge filed a Report and Recommendation which again affirmed the decision of the ALJ. [V.1, D.29] The Recommendation of the Magistrate Judge was adopted by the U.S. District Court on February 27, 2020. [V.1, D.32] Mrs. Steele then filed an appeal to the 11<sup>th</sup> Circuit Court of Appeals. [V.1, D.34]

The 11<sup>th</sup> Circuit Court of Appeals has certified two (2) questions to this Court:

- “(1) Under Florida law is P.S.S. “provided for” in the decedent’s will within the meaning of Fla. Stat. §742.17(4)?
- (2) If the answer is yes, does Florida law authorize a posthumously conceived child who is provided for in the decedent’s will to inherit intestate the decedent’s property?”

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administrative record in this case is found in Docket Number 13 and all pages of such record are found therein.

Dr. Pabon, the doctor who had previously been utilized by Mr. and Mrs. Steele to perform the *in vitro* fertilization of their first child was again utilized to perform the procedure for the second *in vitro* fertilization birth. Dr. Pabon stated that Mr. Steele documented that Mrs. Steele could use the sperm for future conception even if he were incapacitated or deceased.

The government in this case stated in its brief to the 11<sup>th</sup> Circuit that the decision of the ALJ should be followed.

Prior to his death, Mr. Steele had a will prepared by Attorney Louie Adcock. The ALJ recognized that Mr. Adcock had prepared Mr. Steele's will.

The will specifically states the following in Article I:

“The terms “children” and “lineal descendants” shall include those later born or adopted and whenever used in this instrument shall be equivalent to blood relationships and relationships by adoption.” [AR, p. 62

Mr. Adcock was a former president of the St. Petersburg Bar Association and a former member of the Board of Governors of The Florida Bar. Counsel for the Appellant/Movant subsequently asked Mr. Adcock what was intended by Mr. Steele's will with regard to the child in question, P.S.S. Mr. Adcock states in his letter of response that Mr. Steele preserved the sperm which was used by his wife, and such was an indication that this was

a planned pregnancy given that Mr. Steele was aware of his age and health. It is true in Mr. Adcock's letter that he did not recall having a specific conversation with Mr. Steele about preserving his sperm, but the second part of that sentence is as follows:

“But I am sure that it was in his mind that it might be used after his death.” [AR, p. 61]

Mr. Adcock personally believed that Mr. Steele was very devoted to his wife and further believed that the pregnancy was considered to be planned. Mr. Adcock stated as well that he felt that Mr. Steele would be most disturbed to find that his second child had been excluded from benefits. [AR, p. 61]

The Magistrate Judge in this case determined that Mr. and Mrs. Steele had remained married until Mr. Steele's death.

The Florida Probate Code only addresses *in vitro* fertilization where the child was conceived before the death of the decedent. The parties agree that P.S.S. was not conceived before the death of the decedent. The issues present here will, as stated by the 11<sup>th</sup> Circuit, concern Fla. Stat. §742.17(4) (2020)<sup>2</sup> which states as follows:

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<sup>2</sup>All Florida Statutes cited herein have been researched and no amendments have occurred since the date of Mrs. Steele's application for DIB in March, 2013, that change the meaning of any of the portions relevant to this case, therefore have been exactly the same throughout this litigation.

“A child conceived with eggs or sperm of a person or persons who died before the transfer of their eggs, sperm or pre-embryo to a woman’s body should not be eligible for a claim against the decedent’s estate unless the child has been provided for by the decedent’s will.”

The ALJ in this case believed that such statute was the one to be utilized with regard to the *in vitro* fertilization where conception was after the death of the decedent. This was because the ALJ believed that such statute would be the one to address the intestacy rights of the child in question. Inheritance is specifically addressed in §742.17(4), Fla. Stat. (2020). The child with regard to *in vitro* fertilization conceived after the death of the decedent (in this case Mr. Steele) must be the result of an *in vitro* fertilization procedure performed for a commissioning couple, namely the intended mother and father, as defined by §742.13(2), Fla. Stat. (2020). Mr. and Mrs. Steele qualify as such commissioning couple. Mr. and Mrs. Steele had an *in vitro* fertilization procedure performed pursuant to §742.17(4), Fla. Stat (2020).

### **SUMMARY OF ARGUMENT**

#### **I. Whether Under Florida Law, is P.S.S. “provided for” in the Decedent’s Will Within the Meaning of Fla. Stat. §742.17(4)**

In this case, Mr. and Mrs. Steele were a married couple who remained married until the death of Mr. Steele, the decedent in this case, as recognized

by the Federal Magistrate Judge. They were married in August 1997 and decided to have children late in life. Mr. and Mrs. Steele had previously used Dr. Pabon, a fertility doctor, to assist them with having a second child by *in vitro* fertilization. Such child was born after the second procedure was performed by Dr. Pabon.

The second child born by *in vitro* fertilization, is P.S.S., the child in this case. The child was conceived after the death of Mr. Steele.

Dr. Pabon has indicated that Mr. Steele documented his desire to have the second child, such that Mrs. Steele, could utilize such sperm in the future. Dr. Pabon felt this was done even in the event Mr. Steele died or was incapacitated. [AR, p. 32]

Mr. Steele saw attorney Louie Adcock who prepared a will for Mr. Steele. The ALJ recognized that Mr. Adcock had prepared Mr. Steele's will. In such will, that Mr. Steele executed, with regard to later born children, it states in Article I, the following:

"The term "children" and "lineal descendants" shall include those later born or adopted children and wherever this instrument should be the equivalent of blood relationship and relationship by adoption." [AR, p. 62]

Mr. Adcock's statements reveal that he believed this was a planned pregnancy and that Mr. Steele was aware of his age and health. Mr. Adcock also stated although not recalling a specific conversation about preserving sperm he believed it was in Mr. Steele's mind that his sperm might be used after his death. Mr. Adcock also felt Mr. Steele was devoted to his wife, Kathy, and that he would be disturbed to find his second child was excluded from benefits.

Mr. Steele, at the time of his death, was domiciled in the State of Florida and thus Florida law would apply with regard to the obtaining of Social Security benefits for the child.

It is the position of the Appellant/Movant that with the will itself, and the statements from Mr. Adcock and Dr. Pabon that Mr. Steele intended to provide for his second child, P.S.S., in his will. Thus, P.S.S. would have been "provided for" within the meaning of §742.17(4) Fla. Stat. (2020).

**II. Whether if the Answer is Yes, Does Florida Law Authorize the Posthumously Conceived Child Who is Provided For in the Decedent's Will to Inherit Intestate the Decedent's Property**

It is the position of the Appellant/Movant that §742.17(4), Fla. Stat. (2020) is the sole basis for determining whether a child born by *in vitro*

fertilization, conceived after the death of a decedent, can receive intestate property in the State of Florida. There is simply no other statute which addresses this issue.

Notably, §742.17(4), Fla. Stat. (2020) in its heading says it is to address inheritance. The ALJ in this case believed that the only way of determining intestacy for a child born by *in vitro* fertilization after the death of the decedent in Florida was through the usage of §742.17(4), Fla. Stat. (2020). The Appellee stated in this case that the ALJ's opinion should be followed. In taking the plain language of the Statute, the word "unless" in the Statute is defined as "except on the condition that" or "under any other circumstance than". It is the assertion of the Appellant/Movant that there were three (3) conditions precedent for a child to receive intestate benefits who was born by *in vitro* fertilization and conceived after the death of the decedent in Florida per §742.17(4), Fla. Stat. (2020). They are as follows:

First, that the child who is conceived by *in vitro* fertilization must have had the procedure performed at the request of a commissioning couple (in this case with the long-time marriage of the Steele's) this is true since they were the intended mother and father per § 742.13(2) Fla. Stat. (2020).

Second, there must be *in vitro* fertilization with conception after the death of the decedent, which is also true in this case.

Third, and finally, the child (in this case, P.S.S.) was intended to be provided for by Mr. Steele in his will.

Pursuant to law that property not disposed of by will would go intestate per §732.103(1), Fla. Stat. (2020) since the three (3) statutory conditions precedent are met, then the child, P.S.S., could take property intestate in that Mr. Steele provided for P.S.S. in his will.

It is also the Appellant/Movant's belief that P.S.S. is also a descendant of Mr. Steele by virtue of Article I of Mr. Steele's will which indicates that "later born children" are "lineal descendants" and should be treated like any other child under the will. Lineal descendants are synonymous with descendants under Florida law. It is illogical to think the legislature, after setting a strict procedure to inherit by the three (3) steps stated above, would then treat P.S.S. differently than any other child, including one conceived before death. The Appellee's view would mean that no child such as P.S.S., could ever receive children's benefits in Florida. In the Appellee's view if there is a will they could not take benefits since the child could not take intestate property nor could the child receive benefits if there was no will since there was no provision in a will. This could not be what the legislature intended. Sections 742.13 - 742.17 of the Florida Statutes are self-contained with their own definitions and procedures designed especially for this situation.

Thus, having met the conditions precedent, P.S.S. could receive property intestate, under Florida law, and would therefore be entitled to CIB Social Security benefits per federal statute, allowing a previous statute to solve a new issue.

## **ARGUMENT**

### **I. WHETHER UNDER FLORIDA LAW, IS P.S.S. “PROVIDED FOR” IN THE DECEDENT’S WILL WITHIN THE MEANING OF FLA. STAT. §742.17(4)**

This case addresses the issue of whether a child, that is the child of the Appellant/Movant, would be entitled to CIB under the Social Security Act. Although there are other ways to define a child for social security purposes, they are not applicable here. In order for Mrs. Steele’s child to receive CIB benefits, the child would have to be able to receive property intestate under the law of the state in which the decedent, his father, was domiciled at the time of his death per 42 U.S.C. §416(h)(2)(A). Mr. Steele, the husband of the Appellant/Movant in this case, was domiciled in Florida at the time of his death. Therefore, the law of the State of Florida with regard to whether Mrs. Steele’s child could receive property intestate is based upon the law of the State of Florida.

There is law under the Florida Probate Code which allows for a child born by *in vitro* fertilization, who is conceived prior to the death of the decedent to be treated like any other child and thus be able to receive intestate property per §732.106, Fla. Stat. (2020). However, under the Florida Probate Code there is no mention of any statute or any section addressing the issue before the Court in that the child in question in this case was born by *in vitro* fertilization, but was conceived after the death of the decedent.

The only section of Florida law addressing the issue is found at §742.17(4), Fla. Stat. (2020), entitled, “Disposition of eggs, sperm, or pre-embryos; rights of inheritance.”

Such statute provides that:

“[a] child conceived from the eggs or sperm of a person or persons who died before the transfer of the eggs, sperm or pre-embryos to a woman’s body shall not be eligible for a claim against the decedent’s estate unless (emphasis supplied) the child has been provided for by the decedent’s will.” §742.17(4), Fla. Stat. (2020)

This is why the 11<sup>th</sup> Circuit certified the above question to this Court as to whether the child in question, P.S.S., was “provided for” in the decedent’s will, that is Mr. Steele’s will, within the meaning of §742.17(4), Fla. Stat. (2020).

The Appellant/Movant believes that the evidence clearly shows that the child, P.S.S., was provided for in the will of Phillip Steele, his father. It was determined by the Federal Magistrate Judge that Phillip Steele was the father of P.S.S., and that he had been married to the Appellant/Movant, Mrs. Steele, up to the time of his death. [V.1, D.29, p.1] If P.S.S., would have been provided for in his father's, that is the decedent's will, then as shown under Issue II, he would be able to take property intestate and thus be entitled to Social Security benefits.

The argument of the Appellant/Movant within this section is predicated upon three (3) points. First, the actual will itself and what it states; second, the statements of Attorney Louie Adcock who prepared the will; and, third, the statements from Dr. Pabon, who actually had performed both of the *in vitro* fertilization procedures for Mr. and Mrs. Steele and, most importantly, the procedure for P.S.S.'s birth.

In Article I of Mr. Steele's will, it states as follows:

"The terms "children" and "lineal descendants" shall include those later born or adopted children and wherever in this instrument should be the equivalent to blood relationship and relationship by adoption."  
[AR, p. 62]

It is the position of the Appellant/Movant that Mr. Steele clearly addressed the issue of later born children and that they would be treated as his “children” or “lineal descendants” in the same way as any of his other children that he had, which would mean his first child, also born by *in vitro* fertilization.

To understand the intent of Mr. Steele, one of the undersigned attorneys wrote Attorney Louie Adcock as to what he thought was intended by the provisions of Mr. Steele’s Will as it relates to P.S.S.

One should note that Louie Adcock was a former President of the St. Petersburg Bar Association and a former member of the Board of Governors of The Florida Bar. He was an outstanding person and an excellent attorney. One of the undersigned attorneys knew Mr. Adcock when he was a member of the Board of the St. Petersburg Bar Association.

Mr. Adcock stated that he believed that Mr. Steele preserved the sperm which was then used by his wife, in case of his death, for the conceiving of P.S.S. Mr. Adcock further stated that he believed this was a planned pregnancy and that Mr. Steele was aware of his age and health. It is true that in one of the sentences quoted by the Appellee, that Mr. Adcock indicated that he did not recall a conversation with Mr. Steele about preserving sperm,

but then notably, which was not addressed by the Appellee, was the second clause of such statement in that he felt that it was in Mr. Steele's mind that his sperm would be used after his death. Mr. Adcock went on to say that he believed Mr. Steele was very devoted to his wife Kathy, that is the Appellant/Movant in this case, and that the pregnancy was to be considered planned. Mr. Adcock concluded that he felt Mr. Steele would be most disturbed, in his opinion, to find that his second child was excluded from benefits, in this case Social Security benefits, which his first child was able to receive. [AR., p. 61]

Such statements of Mr. Adcock clearly reveal that Mr. Adcock, a reputable and honored member of The Florida Bar, clearly felt that the pregnancy that resulted in the birth of P.S.S., was planned and that Mr. Steele was aware of his age and health and was very devoted to his wife and again considered such pregnancy to be a planned one. Mr. Adcock, by stating his sense in meeting with Mr. Steele that Mr. Steele would be most disturbed to believe that his second child would be excluded from Social Security benefits which his first child could receive is an indication of the opinion of Mr. Adcock that Mr. Steele knew exactly what he was doing and what he intended to have done with regard to the *in vitro* fertilization resulting in the birth of P.S.S.

There is also the statement from Dr. Pabon, the fertilization doctor who had not only performed the procedure which resulted in the birth of P.S.S., but had done so for the prior child of Mr. and Mrs. Steele. He was well aware of the thinking that Mr. Steele had at the time of the second *in vitro* fertilization procedure. Dr. Pabon stated that Mr. Steele “documented his desire for his wife to use the sperm for a future conception even if he were to be incapacitated or deceased.” [AR., p.32]

Mr. and Mrs. Steele had been married for a long time, and in fact had been married in August of 1997 and they decided to start their family later in life. They engaged a fertilization doctor, Dr. Pabon, to perform an *in vitro* fertilization procedure with regard to having a child. Mr. and Mrs. Steele had their first child by virtue of such procedure. Sometime after that, Mr. and Mrs. Steele decided they wanted to have another child and again engaged the services of Dr. Pabon. Such child is P.S.S., the child in question in this case.

Thus, in this case, the evidence is clear from Article I of Mr. Steele’s will as to Mr. Steele’s desire to provide for later born children. The statements from respected Attorney Louie Adcock show that he believed that Mrs. Steele’s pregnancy of P.S.S.’s was planned. Mr. Adcock stated that Mr. Steele was aware of his health and that Mr. Steele would have wanted to

make sure that his second child was treated in the same way as his first. In addition, there is the statement from Dr. Pabon indicating that Mr. Steele documented his desire to preserve his sperm so that his wife could later have another child. Clearly, based upon the foregoing, there must be a finding that yes, P.S.S. was provided for in Mr. Steele's will as contemplated by §742.17(4), Fla. Stat. (2020).

**II. WHETHER IF THE ANSWER IS YES, DOES FLORIDA LAW AUTHORIZE THE POSTHUMOUSLY CONCEIVED CHILD WHO IS PROVIDED FOR IN THE DECEDENT'S WILL TO INHERIT INTESTATE THE DECEDENT'S PROPERTY**

This case concerns P.S.S.'s right to claim CIB under Social Security law; that is benefits that would come to the child of a decedent who was insured for Social Security. Social Security law provides a method that in order for a child to collect benefits from his deceased parent, such child must be able to receive property intestate upon the death of the decedent per 42 U.S.C. §416(h)(2)(A). The law to be followed is the law of the state in which the decedent was domiciled when he died. In this case, Mr. Steele was domiciled in Florida at the time of his death. Thus, it is the law of Florida with regard to intestate benefits for a child such as P.S.S., which is now before this

court. The parties have agreed on same. There is only one location under Florida law which addresses the situation before the Court. A section of law specifically addresses when a child who is conceived prior (emphasis supplied) to the date of the decedent's death, that is §732.106, Fla. Stat. (2020), such child can be treated as any other child and receive intestate benefits. However, in the section of Florida law dealing with domestic relations, specifically determination of parentage, the issue of benefits for a child who is conceived by *in vitro* fertilization after (emphasis supplied) the death of his father is addressed. Such section is §742.17(4) of the Florida Statutes.

Section 742.17, in its heading, states it is addressing the following: the disposition of eggs, sperm, or pre-embryos; rights of inheritance (emphasis supplied). Thus, the inheritance of a child born by *in vitro* fertilization and conceived after the death of its father, would be addressed by such statute.

Specifically, §742.17(4), states the following:

“[a] child conceived from the eggs or sperm of a person or persons who died before the transfer of the eggs, sperm or pre-embryos to a woman's body shall not be eligible for a claim against the decedent's estate unless the child has been provided for by the decedent's will.”

It is the Appellant/Movant's contention that there are three (3) conditions precedent under §742.17(4) which must be met in order for a child such as P.S.S. to be able to receive intestate property from a deceased parent.

First, there must be a commissioning couple which as defined in §742.13(2), Fla. Stat. (2020) as stating that the commissioning couple must be the intended mother and father of the child. In this case, the Federal Magistrate Judge determined that the Steele's had remained married until the time of Mr. Steele's death. [V. 1, D.29, p.1] It is the Appellant/Movant's position that in this case clearly Mr. and Mrs. Steele were a commissioning couple with regard to the *in vitro* fertilization procedure that resulted in the birth of P.S.S.

Secondly, the child must then have been born pursuant to *in vitro* fertilization with conception having occurred after the death of the decedent father, which occurred here. In this case, Dr. Pabon stated in the record that he performed such *in vitro* fertilization which resulted in the birth of P.S.S. [AR., p. 32]

The third and last condition precedent is that the child must have been provided for by the decedent's will. This means there must be provision in the will of Mr. Steele for P.S.S., to receive benefits from such will. As noted, in Argument I, the Appellant/Movant believes that Mr. Steele, pursuant to the

terms in Article I of the will, the statements of Mr. Adcock and Dr. Pabon clearly indicated that he intended to provide for P.S.S., in his will. Mr. Steele intended the planned birth of P.S.S., and wanted his second child to receive the same benefits in a like manner as his first, who had been previously born by *in vitro* fertilization.

The birth of P.S.S. resulted from the action of the commissioning couple, that is the child's intended mother and father, prior to the death of Mr. Steele per §742.13(2), Fla. Stat. (2020).

As noted in the certification opinion to this Court by the 11<sup>th</sup> Circuit Court Judge, the definition of the word “unless” used in §742.07(4), based upon *Merriman Webster's* dictionary, is “except on condition that” or “under any other circumstances than.” Steele v. Commissioner of Social Security, No. 20-11656, (11<sup>th</sup> Cir., Oct. 12, 2022).

In analyzing a statute one begins with the language of the statute itself giving effect to the plain terms of the statute. Paresky v. United States, 995 F.3d 1281, 1285 (11<sup>th</sup> Cir. 2021).

The 11<sup>th</sup> Circuit in its analysis of the plain meaning of language looks “to the common usage of words for their meaning.” Ruiz v. Wing, 991 F.3d 1130, 1138 (11<sup>th</sup> Cir. 2021).

Therefore, as noted by the 11<sup>th</sup> Circuit Court Judge, this means that in analyzing the provision for a child in a will of the decedent one looks to the plain meaning of the word “unless” in §742.17(4), Fla. Stat. (2020), which means except on condition that or under any other circumstances than. Thus, the word “unless” as used by its plain meaning or common usage establishes a condition precedent. The meaning of this condition precedent establishes that the child, in this case P.S.S., could have the same status as a child conceived before the decedent’s death as found in §732.106, Fla. Stat. (2020), if the child were provided for in the decedent’s will and meets two other criteria.

Any other interpretation makes no sense in that it would call for treating a child who meets the conditions precedent as contained in §742.17(4), that is a law on inheritance, differently than any other child, which clearly the legislature would not have intended.

It is noteworthy that the Appellee in its Brief to the 11<sup>th</sup> Circuit at pages 8 and 9 stated that whatever the ALJ said should be followed. The ALJ in this case stated that he believed that §742.17(4) would be the basis to be utilized by Florida Courts with regard to whether the child would be eligible to receive intestate property in Florida. [AR., p. 16] The ALJ based his opinion

specifically on Glover v. Miller, 947 So. 2d, 1254, 1257 (4<sup>th</sup> DCA 2007) and In Re: Estate of Smith, 685 So. 2d, 1206, 1208 (Florida 1996). The ALJ believed that there was Florida precedent created by the usage of §742.17(4), Fla. Stat. (2020) in determinations of paternity for the purpose of determining intestacy rights. Clearly then what the legislature was enacting in §742.17(4) were condition precedents which would be required for a child conceived by *in vitro* fertilization after the death of a decedent to inherit property in Florida. Thus, there would be prior law concerning parentage in a dissolution proceeding which also would be applicable to the new issue of whether children born by *in vitro* fertilization conceived after the death of their father would be able to receive property intestate.

How would such child be able to receive intestate property under the law of the State of Florida? Contrary to the position of the Appellee in the Social Security proceedings and Federal Court, including the 11<sup>th</sup> Circuit, the provision of §742.17(4) does not say that the child must only (emphasis supplied) be “provided for” in the decedent’s will, or through (emphasis supplied) a will, rather that there must be a provision for the child in the decedent’s will. What is the effect of the child being provided for in the decedent’s will?

The effect of being provided for in a decedent's will means that property being disposed of by will would go to the child conceived by *in vitro* fertilization after the death of the decedent. However, not all property may be disposed of by will. Often times there is personal property which was not disposed of by the will. However, Florida law is very clear that property, usually personal property, not disposed of by will goes intestate per §732.103(1), Fla. Stat. (2020). Thus, not only would P.S.S. be able to take property under the will as noted in Argument I, he would also be able to take any property not disposed of by will which means it would go intestate and he would be able to receive his intestate share.

The question that then comes up is whether P.S.S. either would be an heir or need to be a descendant of Mr. Steele in order to receive such property intestate under §742.17(4), Fla. Stat. (2020). The will is very clear in Article I that if it is determined that P.S.S. is provided for in such will, the child is a lineal descendant which is synonymous with the term descendant under §731.201(9), Fla. Stat. (2022), and therefore would be able to take property intestate per §732.103(1), Fla. Stat. (2020). There is also the question raised by the Appellee of whether there must be a separate determination that

P.S.S., even though provided for in the will would not be able to take such property intestate even if he was not conceived before his father's death.

This makes no sense in that in §742 there are a group of sections which are self-contained from §§742.13-742.17 with regard to addressing the issue of inheritance of property for a child such as P.S.S. There is a section with regard to particular definitions in §742.13. Among those definitions there must be a commissioning couple who would start the *in vitro* fertilization procedure performed for the creation of a child. § 742.13(2), Fla. Stat. (2020). Clearly what the legislature intended was to address the unique situation presented in this case, by creating a separate section of the statute on domestic relations concerning parentage as to the inheritance rights of children such as P.S.S. Suffice it to say by looking at the wording addressing the issue of inheritance for such children and the fact that there is a separate section of definitions with regard to this sub-section, clearly leads one to the result that a child such as P.S.S. would only have to meet the conditions contained within these particular subsections, that is §§742.13-17. To do otherwise would mean a child who might be provided for in the will would have no inheritance rights according to the Appellee and he could not receive intestate property.

Such interpretation by the Appellee is at odds with the procedure established by the legislature. The requirement of having the process started by a commissioning couple, that is people intending to be the mother and father, was clearly sufficient in the minds of the legislature to validate the connection between the decedent and a child such as P.S.S. A reasonable interpretation of §742.17(4) is that it is a means by the legislature to attempt to address an issue that had not been previously addressed, but which will result in equal treatment for a child born by *in vitro* fertilization and conceived after the death of the decedent, who meets the three conditions precedent, to that of all other children. Certainly, the legislature would not have wanted to have such child treated any differently than any other children, including the first child of Mr. and Mrs. Steele who was conceived by *in vitro* fertilization prior to Mr. Steele's death.

Significantly, when the three (3) conditions are met, the result is a finding that the child is recognized as the decedent's child and thereby an heir of the decedent which includes descendants of the decedent per §732.103(1), Fla. Stat. (2020), and thus any part of the decedent's estate not effectively disposed of by will passes to the decedent's heirs, per §732.101(1), Fla. Stat.

(2020), one of whom is P.S.S. All of which was assuredly understood by the legislature.

Thus, it is the position of the Appellant/Movant that the three (3) condition precedents of §742.17(4) were met in this case and would allow for P.S.S. to take property under the will of his father, Mr. Steele, and also to receive any property intestate that might not have been disposed by will. Therefore, having said that P.S.S. would be entitled to receive property intestate, such is sufficient for meeting the federal statute allowing P.S.S. to receive his child's share of Social Security benefits from his father, the decedent, Mr. Steele.

### **CONCLUSION**

Based upon the foregoing clearly P.S.S. was provided for in Mr. Steele's will as shown by the evidence of the will itself in Article I, the statements from Mr. Adcock, and the statement from Dr. Pabon. Therefore, having met the first question posed by the 11<sup>th</sup> Circuit that P.S.S. was provided for in the decedent's will under Florida law, clearly then the second question must also be answered in the affirmative in that the three (3) conditions precedents required by §742.17(4) would allow that P.S.S. be able to receive benefits intestate under the laws of the State of Florida.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 17<sup>th</sup> day of November, 2022, a true and correct copy of the foregoing has been delivered by electronic service through Florida Courts E-Filing Portal to the following:

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to *Fla.R.App.P. 9.120(a)(2)(B)*, we hereby certify that this brief has been prepared using 14-point proportionally spaced font, Arial, and that the text of the brief, excluding those sections that need not be counted under *Fla.R.App.P. 9.120(a)(2)(E)*, totals 5,663 words.

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