

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

LASHAWNA M. WALES,	:	APPEAL NO. C-080930
	:	TRIAL NO. A-0607388
Plaintiff-Appellee,	:	
	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
	:	
OHIO PUBLIC EMPLOYEES	:	
RETIREMENT SYSTEM,	:	
	:	
Defendant,	:	
	:	
KERRI MITCHELL,	:	
	:	
SHERI MITCHELL,	:	
	:	
and	:	
	:	
JERRI MITCHELL,	:	
	:	
Defendants-Appellants.	:	
	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

Defendants-appellants Kerri, Sherri, and Jerri Mitchell (“the Mitchells”) appeal from the trial court’s judgment ordering each to pay \$4895.53 plus costs to their half sister, plaintiff-appellee Lashawna M. Wales.

Jerry C. Mitchell, Jr., (“Jerry”) died on November 24, 2005, after retiring on disability from employment with the state of Ohio. Jerry’s Ohio Public Employees

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Retirement System (“OPERS”) retirement account (“the account”) contained a balance at his death, and Jerry had failed to designate a beneficiary for the account. Because of Jerry’s failure, OPERS determined that the account should be paid out in accordance with R.C. 145.43(C). This statute provides that if a member dies before age and service retirement and is not survived by a designated beneficiary, the succession of automatic beneficiaries in order of precedence is as follows: “(1) Surviving spouse; (2) Children, share and share alike; (3) A dependent parent \* \* \*; (4) Parents, share and share alike; (5) Estate.” The statute further provides that “[i]f the beneficiary is deceased or is not located within ninety days, the beneficiary ceases to qualify for any benefit and the beneficiary next in order of precedence shall qualify as a beneficiary.”

Jerry had held himself out as being the biological father of Wales and the Mitchells, and all four women applied for the proceeds of the account as Jerry’s adult children. OPERS advised them that Jerry’s surviving children would be the first qualifying beneficiaries on the account and, that if there were no eligible beneficiaries to receive monthly benefits, a lump-sum payment of Jerry’s OPERS account value would be shared equally by all surviving children.

But OPERS further informed the women that they needed to provide verification that they were Jerry’s children. The Mitchells verified that they were the surviving children by submitting their birth certificates, which Jerry had signed. Wales submitted her birth certificate, but OPERS rejected it as proof of paternity because it did not indicate that Jerry was her father. In January 2006, OPERS advised Wales of alternate methods to establish that Jerry was her biological father. Specifically, she could use DNA test results or provide a court order establishing the parent-child relationship. Wales did not do either within the time period provided by OPERS, even though she

knew the coroner was holding DNA samples of Jerry for her benefit at Kerri Mitchell's request.

In March 2006, Kerri applied in the Hamilton County Court of Common Pleas, Probate Division, to relieve Jerry's estate from administration. Jerry had died intestate, and Kerri had listed herself, Sherri, Jerri, Wales, and Jerri Lynn Harper, another alleged daughter, as Jerry's children and next of kin.

Wales was notified of the April 10, 2006, hearing in probate court on Kerri's application, yet she did not appear to present any proof that she was Jerry's biological child. Harper did not appear either. As a result, the probate court required Kerri to omit Wales and Harper as heirs and entered an order relieving the estate from administration that listed only the Mitchells as next of kin.

On April 13, 2006, Kerri provided OPERS with the probate order determining that the Mitchells were Jerry's next of kin under the laws of intestate succession. On April 25, 2006, OPERS informed Wales that it had voided her application for the proceeds of Jerry's account due to her inability to provide proof of the parent-child relationship. In May 2006, OPERS issued a payment of Jerry's \$58,728.27 account to the Mitchells as Jerry's adult children in three equal lump sums.

In June 2006, Wales took a DNA test that established Jerry's paternity. Then, on June 1, 2007, at Wales's request and without objection, the probate court amended its order relieving Jerry's estate from administration by naming Wales as a child and including her as a next of kin for distribution of the estate.

In August 2006, before the probate court had amended its order, Wales filed this action in the Hamilton County Court of Common Pleas against OPERS and the Mitchells, claiming that the defendants owed her a one-fourth share of Jerry's account.

She then moved for summary judgment against all the defendants. OPERS also moved for summary judgment on the basis that it had distributed the proceeds of the account in accordance with law, citing R.C. 145.43(C)(2) and 145.43(A)(1), which defines a child as a “biological or legally adopted child of a deceased member.” According to OPERS, Wales did not qualify as a beneficiary of the account because she had failed to timely establish that she was the biological child of the deceased.

The trial court granted summary judgment to OPERS but held that genuine issues of material fact remained with regard to Wales’s claim against the Mitchells. The parties entered into stipulations, and both Wales and Kerri testified before the court. After receiving this testimony, the court entered judgment in favor of Wales and against her three sisters, ordering each to pay her \$4895.53 plus costs. In its decision, the court held that the amended entry of the probate court finding Wales to be Jerry’s daughter governed the resolution of the dispute.

In this appeal, the Mitchells argue that the judgment entered against them is not supported in law or equity. We agree.

The trial court held that Wales should recover from the Mitchells a one-fourth share of her father’s OPERS account because she eventually established her paternity in probate court. Yet the trial court had found that Wales had failed to submit proof of paternity within the time required by OPERS.

The administration and management of OPERS is vested by statute in the public employees retirement board.<sup>2</sup> As determined by OPERS, Wales did not qualify as a beneficiary under the statute because she had failed to timely submit proof of paternity. OPERS paid the account proceeds to the qualified beneficiaries under the statute. In

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<sup>2</sup> R.C. 145.04.

holding that the amended probate order was controlling, the trial court erroneously ignored the statutory mandate governing the distribution of the OPERS account.<sup>3</sup> Wales's successful amendment of the probate court order establishing her as next of kin for intestate succession was irrelevant because the account had been distributed to the qualified beneficiaries and did not become an asset of Jerry's estate. Thus, the trial court's decision was incorrect as a matter of law.

Additionally, the judgment cannot be affirmed on the basis of equity. Wales argues that because she has now established paternity with DNA results, it would be unjust for the Mitchells to deny her a one-fourth share of Jerry's account because their actions caused OPERS to void her application. But the trial court did not make any findings to support Wales's claim that actions by the Mitchells had caused OPERS to void her application, and the record does not support such a finding.

The trial court's decision is not supported in law or equity. Accordingly, we sustain the assignments of error, reverse the trial court's judgment against the Mitchells, and order final judgment in favor of the Mitchells as a matter of law.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R.24.

**CUNNINGHAM, P.J., DINKELACKER and WINKLER, JJ.**

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

*To the Clerk:*

Enter upon the Journal of the Court on September 2, 2009

per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>3</sup> See *Ohio Pub. Emps. Retirement Sys. v. Coursen*, 156 Ohio App.3d 403, 2004-Ohio-1229, 806 N.E.2d 197, ¶7 (concluding that OPERS is implemented and created by statute; therefore, benefits are governed by statute and courts cannot ignore the statutory mandates).