



Volume 25 | Issue 6

Article 15

1980

Social Security Act - Widow's Social Security Benefits Extended to Woman Whose Marriage Was Technically Invalid under Pennsylvania's Paramour Statute

Barbara A. Schneller

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>

 Part of the [Conflict of Laws Commons](#), [Family Law Commons](#), and the [Social Welfare Law Commons](#)

Recommended Citation

Barbara A. Schneller, *Social Security Act - Widow's Social Security Benefits Extended to Woman Whose Marriage Was Technically Invalid under Pennsylvania's Paramour Statute*, 25 Vill. L. Rev. 1099 (1980).
Available at: <https://digitalcommons.law.villanova.edu/vlr/vol25/iss6/15>

This Issues in the Third Circuit is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

SOCIAL SECURITY ACT—WIDOW'S SOCIAL SECURITY BENEFITS EXTENDED TO WOMAN WHOSE MARRIAGE WAS TECHNICALLY INVALID UNDER PENNSYLVANIA'S PARAMOUR STATUTE.

Chlystek v. Califano (1979)

Helen Ondrako Chlystek, having lived with Adam Chlystek as his wife since 1939,¹ brought suit to recover widow's benefits under the Social Security Act (Act).² Adam, the deceased wage earner, had been married to Cecelia Nicklas Chlystek from 1927 until 1944 when she divorced him on grounds of adultery, naming Helen as the correspondent in the divorce proceedings.³ Although under the Pennsylvania paramour statute⁴ Adam and Helen were forbidden to marry during Cecelia's lifetime,⁵ they continued to live together and to hold themselves out as husband and wife until Adam's death in 1976.⁶ Except for the paramour statute, Adam and Helen would have been able to establish a valid common law marriage.⁷

Helen's claim for widow's benefits was denied by the Administrative Law Judge,⁸ as was her request for review of the decision.⁹ She subsequently filed an appeal in the United States District Court for the Western District of Pennsylvania, which affirmed the administrative decision.¹⁰ The United States Court of Appeals for the Third Circuit¹¹ reversed without dissent, *holding* that for the purpose of determining entitlement to widow's social security benefits, an otherwise valid common law marriage, contracted in contravention of the Pennsylvania paramour statute, will be recognized. *Chlystek v. Califano*, 599 F.2d 1270 (3d Cir. 1979).

1. *Chlystek v. Califano*, 599 F.2d 1270, 1270 (3d Cir. 1979).

2. *Id.* at 1271. For a discussion of the Social Security Act, *see* notes 12-19 and accompanying text *infra*.

3. 599 F.2d at 1270.

4. PA. STAT. ANN. tit. 48, § 169 (Purdon Supp. 1979-1980). For a discussion of the Pennsylvania paramour statute, *see* notes 25-27 and accompanying text *infra*.

5. 599 F.2d at 1270.

6. *Id.*

7. *Id.* at 1271 n.1. For a brief discussion of common law marriage in Pennsylvania, *see* PA. STAT. ANN. tit. 48, §§ 1-23 (Purdon 1965); note 24 and accompanying text *infra*.

8. 599 F.2d at 1271. While Adam was alive, Helen had filed applications for social security benefits as his wife, but these applications were denied on the ground that, under Pennsylvania law, she was not Adam's wife. *Id.* The Chlysteks subsequently brought suit to declare the paramour statute unconstitutional and to compel the Register of Wills to issue them a marriage license. *Id.* On the second appeal from the district court's dismissal of the suit, the Third Circuit reversed and instructed the lower court to address the constitutional issue. *Chlystek v. Kane*, 540 F.2d 171 (3d Cir. 1976), *rev'g* 412 F. Supp. 20 (W.D. Pa. 1976). *See also* *Chlystek v. Kane*, 529 F.2d 511 (3d Cir. 1975) (unpublished opinion) (vacating and remanding the first dismissal by the district court). Adam's death prior to the filing of the court of appeal's decision to remand, however, ended the litigation for wife's benefits and prompted Helen to file for widow's benefits. *See* *Chlystek v. Califano*, 599 F.2d at 1271.

9. 599 F.2d at 1271. Denial of the claimant's request for review rendered the Administrative Law Judge's decision final. *Id.*

10. *Id.*

11. The case was heard by Judges Adams, Garth, and Hunter. Judge Hunter wrote the opinion.

The Social Security Act¹² was enacted by Congress in 1935 to help alleviate the insecurities of old age and unemployment.¹³ As amended in 1939, the Act provides for benefits to the family of a retired or deceased wage earner.¹⁴ Although jurisdiction to adjudicate social security claims is reserved to the federal courts,¹⁵ thus rendering eligibility for benefits a federal question,¹⁶ family status under the Act is determined, with limited exception,¹⁷ by the law of the state in which the wage earner is, or was, domiciled.¹⁸ In order to protect the wage earner and his family from inconsistencies and inequities resulting from differences in state law, however, Congress has provided that if the parties, in good faith, went through a marriage ceremony, they will be deemed to be married for the purposes of the Social Security Act even though the domiciliary state would not find them validly married.¹⁹

12. 42 U.S.C. §§ 401-433 (1976) (originally enacted as Act of Aug. 14, 1935, ch. 531, § 201, 49 Stat. 620).

13. See *United States v. Silk*, 331 U.S. 704 (1946). The *Silk* Court stated:

The Social Security Act of 1935 was the result of long consideration by the President and Congress of the evil of the burdens that rest upon large numbers of our people because of the insecurities of modern life, particularly old age and unemployment. It was enacted in an effort to coordinate the forces of government and industry for solving these problems.

Id. at 710 (footnote omitted).

14. 42 U.S.C. § 402 (1976) (originally enacted as Act of Aug. 10, 1939, ch. 666, § 202, 53 Stat. 1360).

15. 42 U.S.C. § 405(g) (1976).

16. See 1A MOORE'S FEDERAL PRACTICE ¶ 0.323[20], at 3385 (2d ed. 1976), citing *Burns v. Alcalá*, 420 U.S. 575 (1975); *Carlson v. Remillard*, 406 U.S. 598 (1972); *Maloney v. Celebrezze*, 337 F.2d 231 (3d Cir. 1964); *Nicholas v. Richlow Mfg. Co.*, 126 F.2d 16 (10th Cir. 1942). Federal courts are not required to apply state law when deciding a federal question under the doctrine of *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938). See 1A MOORE'S FEDERAL PRACTICE, *supra*, ¶ 0.318[2] at 3251. The Social Security Act, however, mandates that family status is to be determined by the law of the state where the wage earner is domiciled. See note 18 and accompanying text *infra*. Where the federal court finds, however, that the application of state law would impede the underlying objectives of the Act, it may decline to apply state law. See *Sparks v. United States*, 153 F. Supp. 909, 911 (D. Vt. 1957); 1A MOORE'S FEDERAL PRACTICE, *supra*, ¶ 0.323[20] at 3388. For a discussion of the role of state law in federal question cases, see generally C. WRIGHT, LAW OF FEDERAL COURTS § 60 (3d ed. 1976).

17. See notes 19-21 and accompanying text *infra*.

18. 42 U.S.C. § 416(h)(1)(A) (1976). This section provides in pertinent part:

An applicant is the wife, husband, widow, or widower of a fully or currently insured individual for purposes of this subchapter if the courts of the State in which such insured individual is domiciled . . . would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died.

Id.

19. *Id.* § 416(h)(1)(B) (1976). This section provides in pertinent part:

In any case where . . . an applicant is not . . . the wife, widow, husband, or widower of a fully or currently insured individual . . . but it is established to the satisfaction of the Secretary that such applicant in good faith went through a marriage ceremony with such individual resulting in a purported marriage between them which, but for a legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage, and such applicant and the insured individual were living in the same household at the time of the death of such insured individual . . . such purported marriage shall be deemed to be a valid marriage.

Many of the courts which have interpreted the Act have stated that, as a remedial statute, it is to be construed broadly and its benefits are to be liberally granted in order to ease the economic burdens of the aged and unemployed.²⁰ Courts taking this approach have granted social security benefits although it was arguable that a technical requirement of eligibility had not been fulfilled.²¹ In two cases, however, women claiming to be common law wives were denied widow's benefits, one on the ground that the state did not recognize common law marriage,²² and the other on the ground that the state requirements for establishing a common law marriage had not been met.²³

Pennsylvania law recognizes the validity of a common law marriage,²⁴ but, since 1815, has prohibited any marriage between a person previously divorced on the grounds of adultery and the partner to the adulterous con-

Id. (emphasis added). The statute defines a legal impediment as an impediment which arises out of a procedural defect in the marriage or an unwitting failure to dissolve a previous marriage. *Id.* Congress attempted to avoid the vagaries of state law because "[t]he state laws governing marriage and divorce are sometimes complex and subject to differing interpretations, a person may believe that he is validly married when he is not." S. REP. NO. 1856, 86th Cong., 2d Sess. 22 (1960), reprinted in [1960] U.S. CODE CONG. & AD. NEWS 3608, 3629. See also note 16 *supra*.

20. See, e.g., *Williams v. Califano*, 590 F.2d 1332 (5th Cir. 1979); *Rosenberg v. Richardson*, 538 F.2d 487 (2d Cir. 1976); *Sierakowski v. Weinberger*, 504 F.2d 831 (6th Cir. 1974); *Pleasant v. Richardson*, 450 F.2d 749 (5th Cir. 1971); *Rasmussen v. Gardner*, 374 F.2d 589 (10th Cir. 1967); *Hoffman v. Gardner*, 369 F.2d 837 (8th Cir. 1966); *Rodriguez v. Celebrezze*, 349 F.2d 494 (1st Cir. 1965); *Delno v. Celebrezze*, 347 F.2d 159 (9th Cir. 1965); *Brown v. United States*, 330 F.2d 692 (6th Cir. 1964); *Conklin v. Celebrezze*, 319 F.2d 569 (7th Cir. 1963); *Celebrezze v. Bolas*, 316 F.2d 498 (8th Cir. 1963).

21. See, e.g., *Damon v. Secretary of HEW*, 557 F.2d 31 (2d Cir. 1977) (child, not adopted within statutory time period, eligible for children's benefits); *Haberman v. Finch*, 418 F.2d 664 (2d Cir. 1969) (part-time student eligible for student benefits despite statutory requirement of full-time student status); *Schmiedigan v. Celebrezze*, 245 F. Supp. 825, (D.D.C. 1965) (widow living in mental hospital eligible for widow's benefits despite statutory requirement that she live in wage earner's household); *Sparks v. United States*, 153 F. Supp. 909 (D. Vt. 1957) (remarried widow, whose marriage was annulled, eligible for widow's benefits, despite statutory provision to the contrary). Compare *Rosenberg v. Richardson*, 538 F.2d 487 (2d Cir. 1976) (both legal widow and "deemed" widow eligible for share of widow's benefits despite statutory provision indicating only legal widow is eligible) with *Davis v. Califano*, 603 F.2d 618 (7th Cir. 1979) (granting widow's benefits only to legal widow).

22. *Sanabria v. Secretary of HEW*, 390 F. Supp. 538 (D.P.R. 1975). Only thirteen states currently recognize common law marriage: Alabama, Colorado, Georgia, Idaho, Iowa, Kansas, Montana, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, and Texas. See Comment, 39 U. PITT. L. REV. 579, 585 (1978), citing H. CLARK, CASES AND PROBLEMS ON DOMESTIC RELATIONS 67 (2d ed. 1974).

23. *Peters v. Weinberger*, 337 F. Supp. 294 (M.D. Fla. 1974) (failure to prove present agreement to be married). Although the requirements to establish a common law marriage may vary somewhat from jurisdiction to jurisdiction, all require that the parties have entered a present agreement to be husband and wife. See Comment, *supra* note 22, at 579 n.4.

24. PA. STAT. ANN. tit. 48, §§ 1-23 (Purdon 1965). The elements of a Pennsylvania common law marriage are set forth in the case law. The courts look for an expression of present intention, at some time, to assume the relationship of husband and wife. *Buradus v. General Cement Prods. Co.*, 159 Pa. Super. Ct. 501, 48 A.2d 883 (1946), *aff'd*, 356 Pa. 349, 52 A.2d 205 (1947). When evidence of present intent is lacking, marriage is presumed if the parties live together and hold themselves out as husband and wife. 159 Pa. Super. Ct. at 504, 48 A.2d at 885.

duct.²⁵ Similar paramour statutes in other states have been repealed.²⁶ Pennsylvania is the only state which continues to restrict adulterous paramours' ability to marry.²⁷

In the 1898 case of *In re Stull's Estate*,²⁸ the Supreme Court of Pennsylvania applied the paramour statute to deny plaintiff's application for letters of administration to her husband's estate, holding that their marriage, validly contracted in Maryland, but in contravention of Pennsylvania's paramour statute, was void.²⁹ The court reasoned that the paramour statute absolutely prohibited an adulterous couple from marrying so long as the injured spouse was living, regardless of the location or the circumstances under which the purported marriage took place.³⁰

Relying on the broad and forbidding language of *Stull*, the Third Circuit, in *Warrenberger v. Folsom*,³¹ denied social security benefits to a woman ceremonially married out-of-state in contravention of the paramour statute.³² The court, finding that the plaintiff's marriage was invalidated by

25. PA. STAT. ANN. tit. 48, § 169 (Purdon Supp. 1979-1980) (originally enacted as Act of March 13, 1815, ch. 4104, 1815 PA. LAWS 286, 289 (amended 1971). The statute provides:

The husband or wife, who shall have been guilty of the crime of adultery, shall not marry the person with whom the said crime was committed, during the life of the former wife or husband; but nothing herein contained shall be construed to extend to or affect or render other than legitimate any children born of the body of the wife during coverture.

Id. It is not necessary that the spouse be convicted of adultery in a criminal proceeding; adultery shown in the divorce proceeding is sufficient. *Chlystek v. Califano*, 599 F.2d at 1271, citing *In re Lenherr's Estate*, 455 Pa. 225, 314 A.2d 255 (1974); *Kalmbacher v. Kalmbacher*, 63 Pa. D. & C. 195 (1945). Pennsylvania law prohibits the issuance of a marriage license to the paramours. PA. STAT. ANN. tit. 48, §§ 1-5 (Purdon 1965).

26. See, e.g., LA. CIV. CODE ANN. art. 160 (West) (repealed 1972); N.Y. DOMESTIC RELATIONS LAW § 8 (McKinney 1964) (repealed 1977); TENN. CODE ANN. § 36-831 (repealed 1970); VA. CODE § 20-119 (repealed 1975).

27. Grose, *A Constitutional Analysis of Pennsylvania's Restrictions Upon Marriage*, 83 DICK. L. REV. 71, 93 (1978). It has been suggested that the paramour statute unconstitutionally infringes on the fundamental right to marry in that it does not pass the "critical examination" to which statutory classifications which "significantly interfere" with fundamental rights are subject. *Id.* For a discussion of the fundamental right to marry, see *Zablocki v. Redhail*, 434 U.S. 374 (1978); *Loving v. Virginia*, 388 U.S. 1 (1967).

28. 183 Pa. 625, 39 A. 16 (1898).

29. *Id.* at 637, 39 A. at 20. Following decedent's divorce by his first wife on the ground of adultery, the decedent and the plaintiff, who had been named as the correspondent in the divorce proceeding, were ceremonially married in Maryland and returned to Pennsylvania where they lived as man and wife. *Id.* at 628, 39 A. at 16.

30. *Id.* at 629, 39 A. at 16. The court stated the prohibition in no uncertain terms:

[T]here is an absolute prohibition of any subsequent marriage between the guilty person and the paramour during the life of the former wife or husband. . . . A personal incapacity to marry is imposed. The necessary meaning of [the statutory] language is that they shall not marry at all, in any circumstances, or at any time or in any place, so long as the injured party is living.

Id.

31. 239 F.2d 846 (3d Cir. 1956).

32. *Id.* at 848. The applicant in *Warrenberger*, having been divorced by her first husband on the ground of adultery with the deceased wage earner, subsequently went through a ceremonial marriage with her paramour. *Id.* The congressional exception for parties who go through a marriage ceremony in good faith was not enacted until 1960 and was, therefore, not available to the *Warrenberger* court. For a discussion of this exception, see note 19 *supra*.

the paramour statute, held that the plaintiff was not the decedent's widow for purposes of the Social Security Act.³³

Most recently, in *In re Lenherr's Estate*,³⁴ the Pennsylvania Supreme Court recognized a valid out-of-state marriage contracted in contravention of the paramour statute for the purpose of allowing a widow to claim the marital exemption to the Pennsylvania inheritance tax.³⁵ The *Lenherr* court reasoned that a marriage may be valid for some incidents or purposes, while invalid for others.³⁶ Analyzing the validity of the marriage as a conflict of laws question,³⁷ the court decided that the marriage, valid in the state where it was contracted, was valid in Pennsylvania unless it violated a strong Pennsylvania public policy interest.³⁸ The *Lenherr* court found that the state's policy of protecting the "sensibilities of the injured spouse"³⁹ was outweighed by the need for uniform recognition of marriages, and by the strong state interest in allowing property accumulated by the mutual efforts of two people living as husband and wife "to pass to the survivor without the imposition of a tax."⁴⁰

With this historical framework in mind, the Third Circuit, in *Chlystek*, found that the absolute prohibition of the paramour statute, as interpreted in *Stull*, had been undermined by the more liberal approach taken by the Pennsylvania Supreme Court in *Lenherr*.⁴¹ Although the *Lenherr* court

33. 239 F.2d at 849.

34. 455 Pa. 225, 314 A.2d 255 (1974).

35. *Id.* at 232, 314 A.2d at 259. After both had been divorced on the ground of adultery, but while their respective spouses were still living, Leo Lenherr and Sarah Barney went to West Virginia and were ceremonially married. *Id.* at 227, 314 A.2d at 257. They subsequently returned to Pennsylvania where they lived until Leo Lenherr's death. *Id.* For the marital exemption to the Pennsylvania Transfer Inheritance Tax, see PA. STAT. ANN. tit. 72, §§ 2485-2311 (Purdon 1965).

36. 455 Pa. at 230-31, 314 A.2d at 258. Finding support for this approach in the paramour statute itself, the court noted that "the legislature has determined that at least one incident of marriage—the legitimacy of children—is not to be denied despite the prior adjudication of adultery." *Id.*, citing PA. STAT. ANN. tit. 48, § 169 (Purdon Supp. 1979-1980).

37. *Id.* at 230, 314 A.2d at 257.

38. *Id.* at 230-32, 314 A.2d at 258-59. The court adopted the conflict of laws rule set forth in the second *Restatement of Conflict of Laws*: "A marriage which satisfies the requirements of the state where the marriage was contracted will be recognized as valid unless it violates the strong public policy of another state which has the most significant relationship to the spouses and the marriage at the time of the marriage." RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 283(2) (1971). The *Lenherr* court determined that Pennsylvania had the most significant relationship to the spouses and the marriage. 455 Pa. at 230, 314 A.2d at 258.

39. *Id.* at 231-32, 314 A.2d at 258-59. According to the *Lenherr* court, the paramour statute "is intended not so much as a penalty upon the parties who failed to recognize the sanctity of the former marriage vow as it is intended to protect the sensibilities of the injured spouse." *Id.* at 231, 314 A.2d at 258.

40. *Id.* at 232, 314 A.2d at 259. The court reasoned that recognition of the marriage would foster the policy of the marital exemption to the inheritance tax, whereas denial of the marriage would not further the policy of the paramour statute. *Id.* The court stated:

Such denial could [protect the injured spouse] only if it: (1) could deter either the adulterous conduct during the valid marriage or the subsequent marriage of the guilty spouse and his or her paramour; or (2) could in any way spare the aggrieved former spouse the affront caused by such marriage.

Id.

41. 599 F.2d at 1272.

spoke in terms of conflict of laws, the Third Circuit adopted the Pennsylvania court's policy rationale to validate the Chlystek's marriage despite the absence of a prior out-of-state marriage.⁴²

The *Chlystek* court concluded that the policies of the Social Security Act⁴³ outweigh those of the paramour statute.⁴⁴ The court further analogized to the *Lenherr* decision, finding that, because social security benefits are based on the contributions of the wage earner,⁴⁵ widow's benefits are, as is accumulated property, the product of the couple's joint effort.⁴⁶

Although the Chlystek had not been ceremonially married as required by the statutory exception,⁴⁷ the court interpreted Congress' limited recognition of technically invalid marriages as an indication that the goals of the Social Security Act outweigh state marriage restrictions for some purposes.⁴⁸ Furthermore, the court reasoned that allowing the plaintiff to collect widow's benefits would not deprive the decedent's former wife of social security benefits had she been receiving them.⁴⁹ Lastly, the court determined that denial of widow's benefits would neither deter the adulterous conduct nor spare the former spouse the affront caused by the second marriage.⁵⁰ The court concluded that, on balance, Helen Chlystek was entitled to social security benefits as Adam's widow.⁵¹

It is submitted that the distinguishing ceremonial out-of-state marriage in *Lenherr*:⁵² simply allowed the Pennsylvania court to make a policy deci-

42. *Id.* at 1273. The defendant in *Chlystek* had argued that *Lenherr* was distinguishable in that, in the latter case, the parties had been ceremonially and validly married in another state. *Id.* at 1273 n.2. The court responded that, in view of the Pennsylvania court's reliance on policy considerations, the *Lenherr* court would have validated the marriage had no out-of-state ceremony taken place. *Id.* The court observed: "Certainly, the Pennsylvania courts would not want to encourage its citizens to avoid the application of the state's own marriage laws by fleeing the jurisdiction." *Id.*

43. For a discussion of the policies of the Social Security Act, see notes 12-19 and accompanying text *supra*.

44. 599 F.2d at 1274. For a discussion of the policies of the paramour statute, see note 39 and accompanying text *supra*.

45. See 42 U.S.C. § 402(e) (1976).

46. 599 F.2d at 1273. See also note 40 and accompanying text *supra*.

47. See 599 F.2d at 1273 n.4; note 19 and accompanying text *supra*.

48. 599 F.2d at 1273 n.4.

49. *Id.* at 1274 n.6. The Social Security Act provides for widow's benefits to "the widow and every surviving divorced wife." *Id.*, citing 42 U.S.C. § 402(e)(1) (1976) (emphasis by the court).

50. 599 F.2d at 1272-73. It should be noted that this was the reasoning used by the *Lenherr* court. See notes 39-40 and accompanying text *supra*. The *Chlystek* court remarked: "Certainly, the future availability of federal old age benefits would not be a big factor in the decision whether to engage in an adulterous relationship." 599 F.2d at 1273. The court further noted that the Pennsylvania Legislature decriminalized adultery in 1972, interpreting the change as a legislative judgment that adultery was no longer a matter for strict regulation. *Id.* at 1274 n.5, citing Act of Dec. 6, 1972, Act No. 334, 1972 PA. LAWS 1482-1613 (amending Pennsylvania criminal code without providing for crime of adultery). For the text of the former adultery statute, see PA. STAT. ANN. tit. 18, § 4505 (Purdon 1965) (repealed 1972).

51. 599 F.2d at 1274. Because the court upheld the plaintiff's entitlement on statutory grounds, it did not reach her argument that the paramour statute is unconstitutional. *Id.* at 1274 n.7.

52. See 455 Pa. at 227, 314 A.2d at 257; notes 34-35 and accompanying text *supra*.

sion under the guise of solving a conflict of laws problem,⁵³ and that the Third Circuit properly concluded that the *Lenherr* court would have recognized plaintiff as the decedent's widow even if there had been no out-of-state marriage.⁵⁴ Had the Pennsylvania court wanted to invalidate the marriage, it could have either relied on the *Stull* court's refusal to recognize a valid out-of-state marriage⁵⁵ or balanced the conflict of laws in favor of the paramour statute.⁵⁶ By validating the marriage, the *Lenherr* court effectively overruled *Stull*, implying that the state interest behind the paramour statute was currently less compelling than at the time of the *Stull* decision.⁵⁷

Nevertheless, since eligibility for social security benefits is a federal question,⁵⁸ the federal courts need not apply state law if they find that the particular state law would thwart the objectives of the Social Security Act.⁵⁹ Considering that Congress explicitly sought to protect wage earners and their families from inconsistencies in state marriage laws⁶⁰ and that most courts have held that the Act should be construed liberally in order to supply at least a minimum level of support to the elderly and unemployed,⁶¹ it is submitted that the *Chlystek* court properly granted Helen Chlystek widow's benefits. Unlike other cases in which purported common law wives were denied widow's benefits,⁶² Helen was able to establish all of the elements of a valid common law marriage in Pennsylvania,⁶³ a state which recognizes common law marriage.⁶⁴ The only barrier to her eligibility for social security benefits was the restriction of the paramour statute,⁶⁵ a restriction which the Pennsylvania Supreme Court has indicated is not so strict as to defeat all claims involving incidents of marriage.⁶⁶

Because Pennsylvania is the only state which still has a paramour statute in effect,⁶⁷ the direct impact of *Chlystek* will be somewhat limited. Read

53. See 455 Pa. at 230, 314 A.2d at 257; notes 37-40 and accompanying text *supra*.

54. See 599 F.2d at 1273 n.2; note 42 and accompanying text *supra*.

55. See 183 Pa. at 629, 39 A. at 16; notes 28-30 and accompanying text *supra*.

56. For the *Lenherr* court's balancing of conflicting policies in applying the conflict of laws rule, see notes 37-40 and accompanying text *supra*.

57. See 455 Pa. at 232, 314 A.2d at 259.

58. 42 U.S.C. § 405(g) (1976). See notes 15-16 and accompanying text *supra*.

59. See note 16 *supra*.

60. See 42 U.S.C. § 416(h)(1)(B) (1976); note 19 and accompanying text *supra*.

61. For a discussion of the courts' liberal construction of the Social Security Act, see notes 20-21 and accompanying text *supra*.

62. For a discussion of cases in which purported common law wives were denied social security benefits, see notes 22-23 and accompanying text *supra*.

63. 599 F.2d at 1271 n.1. Compare *id.* with *Peters v. Weinberger*, 337 F. Supp. 294 (M.D. Fla. 1974). For a brief discussion of *Peters*, see note 23 and accompanying text *supra*. For a discussion of common law marriage in Pennsylvania, see note 24 and accompanying text *supra*.

64. See note 24 and accompanying text *supra*. Compare PA. STAT. ANN. tit. 48, §§ 1-23 (*Purdon* 1965) with *Sanabria v. Secretary of HEW*, 390 F. Supp. 538 (D.P.R. 1975). For a brief discussion of *Sanabria*, see note 22 and accompanying text *supra*.

65. 599 F.2d at 1271 n.1. For a discussion of the paramour statute, see note 25 and accompanying text *supra*.

66. See *In re Lenherr's Estate*, 455 Pa. 225, 314 A.2d 255 (1974); notes 34-40 and accompanying text *supra*.

67. See *Grose*, *supra*, note 27, at 93. For a partial listing of states which have repealed paramour statutes, see note 26 *supra*.

most narrowly, *Chlystek* overrules *Warrenberger*⁶⁸ with the result that a person domiciled in Pennsylvania will no longer be denied social security benefits because of the paramour statute.⁶⁹ Read more broadly, *Chlystek* provides precedent for granting other federal claims, such as veteran's benefits⁷⁰ or recovery under the Federal Employer's Liability Act,⁷¹ to spouses whose marriages may be otherwise invalid under the paramour statute. Further, the case may have persuasive value for Pennsylvania courts adjudicating state claims such as workmen's compensation⁷² or property rights which arise as an incident of marriage.⁷³ Moreover, *Chlystek* certainly adds to the number of cases which support a liberal construction of the Social Security Act.⁷⁴

In conclusion, it should be noted that, as more incidents of marriage become exempted from the effect of the paramour statute, the Pennsylvania legislature may see fit to repeal the statute altogether.⁷⁵ This action may be further prompted by the fact that no other state still has a paramour statute⁷⁶ and by a recent constitutional challenge.⁷⁷

Barbara A. Schneller

68. For a discussion of *Warrenberger*, see notes 31-33 and accompanying text *supra*.

69. See *Chlystek v. Califano*, 599 F.2d at 1274.

70. See National Service Life Insurance Act of 1957, 38 U.S.C. § 103(c) (1976).

71. 45 U.S.C. § 51 (1976).

72. PA. STAT. ANN. tit. 77, § 561 (Purdon Supp. 1979-1980).

73. See, e.g., PA. CONS. STAT. ANN. tit. 20, § 2102 (Purdon Supp. 1979-1980) (intestacy rights); PA. STAT. ANN. tit. 48, § 131 (Purdon Supp. 1979-1980) (support payments). See also Commonwealth *ex rel. Keith v. Keith*, 218 Pa. Super. Ct. 134, 279 A.2d 311 (1971) (support order contested on ground that marriage was void because of prior existing marriage).

74. See notes 20-21 and accompanying text *supra*.

75. The paramour statute was amended in 1971 to provide minor wording changes. Compare PA. STAT. ANN. tit. 48, § 169 (Purdon 1965) with PA. STAT. ANN. tit. 48, § 169 (Purdon Supp. 1979-1980). It may be argued that this recent reenactment indicates legislative support of the paramour statute. It is submitted, however, that if the courts continue to whittle away at the scope of the statute, the legislature may be persuaded to repeal it.

76. See note 27 and accompanying text *supra*.

77. See note 27 *supra*.