1975

Lorin R. Farnsworth v. The Industrial Commission of Utah : Brief of Respondent

Utah Supreme Court

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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

LORIN R. FARNSWORTH, father of Matt Robert Farnsworth, deceased,
Plaintiff,

vs.

THE INDUSTRIAL COMMISSION OF UTAH, ARCHITECTURAL BUILDING SUPPLY, THE STATE INSURANCE FUND, and THE SECOND INJURY FUND OF THE STATE OF UTAH,
Defendants.

Case No. 13910

RESPONDENT'S BRIEF

Writ of Review from an Order of the Industrial Commission of Utah

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TABLE OF CONTENTS

CASES CITED

TABLE OF CONTENTS—Continued

STATUTES CITED

OTHER AUTHORITIES

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STATEMENT OF THE NATURE OF THE CASE

Upon the death of Matt Robert Farnsworth, the plaintiff herein, Lorin R. Farnsworth, father of the deceased, filed a claim with the Industrial Commission of Utah requesting funds allegedly due him for his partial dependency on his son under the Workmen's Compensation Act.

DISPOSITION OF THE CASE BY THE INDUSTRIAL COMMISSION OF UTAH

After a hearing on the claim presented by the plaintiff, Lorin R. Farnsworth, the Industrial Commission of Utah entered an order denying plaintiff the benefits requested for his dependency on the deceased. The Commission found that the plaintiff, under the circumstances of this case was not entitled to the benefits.

Upon the filing of a Motion to Review, the entire Commission reviewed the grounds for granting said motion and itself ordered that the dependency shown by the facts of the case was not that which is contemplated and intended within the meaning of the Workmen's Compensation Act. With said order, the Motion for Review was denied.

NATURE OF RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the Hearing Examiner's findings and affirmation of the Industrial Commission's order that the dependency shown was not that intended under the Workmen's Compensation Act and that said benefits requested by the plaintiff be denied.

STATEMENT OF FACTS

The respondent agrees substantially with the facts as set forth by the plaintiff but makes the following additions and corrections:

1. While the deceased was in high school, he worked

for Egbert Parking Service as a part-time employee. He often worked split shifts upwards of 12 hours per day (R. 28). Though this lengthy shift work was not consistent, he would consistently work at least 20-25 hours per week in addition to going to high school (R. 28).

2. Though Matt Robert Farnsworth was employed during high school and after graduation, he continued to reside at home, eat meals at home, and share the benefits of the family unit as he was accustomed to (R. 34). He retained all income from his jobs and did not contribute any such funds to his parents for room or board, etc. (R. 34).

3. Appellant testified at the hearing that the deceased was reimbursed for gas used in deceased's car when said car was used for transporting him (R. 41). Further, appellant testified that the main reason he paid bills in person was to get outside and to simply go somewhere (R. 38). Further, he testified that his boys and "my wife" would read mail to him (R. 46).

4. Appellant's mother died several months before the hearing and appellant took care of her house because he had not decided what to do with it — whether to sell it or rent it (R. 37). All indications in the testimony indicated no need for the extensive care.

5. Mark Farnsworth testified that he was able to accomplish all that the deceased brother had (R. 60). Even though unemployed at the time, he testified his services were worth $500, the same amount requested

by his father in his application (R. 58). Mark further testified that part of the time he would spend in helping his father would be working on cars (R. 57). The appellant, wife, and son Mark at that time had 6 cars and two trucks (R. 60); and that before the death of Matt, he had spent approximately one hour a day in behalf of his father (R. 57).

6. The appellant indicated without reservation that Matt would do the watering, mowing and odd jobs around appellant's mother's home, but that if it needed painting, he would pay someone else to do the work.

7. The deceased was working full time and only earning approximately $400 per month (R. 26, 27), whereas the appellant claims that the services of the son of approximately 2½ hours per day (R. 39) or 15 or so hours a week at most is worth $500, $100 more than he made in gainful employment. Also, the record is clear that since Matt was working for Architectural Supply, extended journeys were taken by the deceased (e.g., the trip to Idaho Falls when he was killed) which would show his inability to do all he had done before (R. 6).

ARGUMENT

POINT I.

THERE WAS NO SHOWING OF ABUSE ON THE PART OF THE HEARING EXAMINER OR THE INDUSTRIAL COMMISSION IN RULING AGAINST THE APPELLANT; AND

AS SUCH THE DECISION OF THE COMMISSION MUST BE AFFIRMED.

In *Rigby* v. *Industrial Commission,* 75 Utah 454, 286 P. 628 (1930), cited by the plaintiff in support of his position, this court said:

> Whether one person is dependent upon another within the meaning of the Workmen's Compensation Act is primarily a question of fact. It is the exclusive province of the Industrial Commission to determine the facts and to draw legitimate inferences therefrom. *It is also, in the first instance, the province of the Commission to determine from such facts and inferences whether dependency does or does not exist.* When, however, the established facts and inferences reasonably deducible therefrom can lead to but one conclusion, a question of law is presented which this court, upon property application, must review. (Emphasis added.)

This court further expressed the powers it has in such cases in *Combined Metals Reduction Co.* v. *Industrial Commission,* 74 Utah 247, 278 P. 1019 (1929). There, the court said:

> The power of this court to review an award made by the Industrial Commission "shall not be extended further than to determine whether or not: 1. The commission acted without or in excess of its powers. 2. If findings of fact are made, whether or not such findings of fact support the award under review.

These cases clearly show the state of the law regarding the Commission's findings. The record contains more than ample evidence and testimony to establish that the hearing examiner's decision and the later holding of the Commission was not against the weight of evidence "as a matter of law." Further, *Rigby* holds that *only* when *one* decision could have been reached (from the evidence) and was not, the Supreme Court had grounds to intervene in reversal. Such is not the case at bar, for the facts support a legitimate contest based on the Commission's interpretation of the evidence.

Not only did the hearing examiner state in his findings of fact and conclusion of law that the evidence was clearly against the position of the plaintiff, but the Industrial Cosmission also stated in its denial of Motion for Review (R. 96) that:

> . . . *the Commission has reviewed the file and memorandums* contained therein, and we are of the opinion that the motion for review should be denied. It is our judgment that *although the applicant may have been dependent upon the deceased for certain activities, the dependency as expressed by the evidence* is not one that was contemplated within the meaning of the Workmen's Compensation Act. (Emphasis added.)

Therefore, it is evidence from the foregoing that the evidence interpreted by the Commission and Hearing Examiner led to the denial of relief. Since this evidence was weighed carefully with the plaintiff herein arguing

vigorously for his position, the decision affirmed by the Industrial Commission must be affirmed by this court.

POINT II.

APPELLANT WAS NOT PARTIALLY DEPENDENT ON THE DECEASED SON WITHIN THE MEANING OF THE WORKMEN'S COMPENSATION ACT.

As correctly cited by the Appellant in his brief, there is no presumption of dependency in a case such as the persent action. Utah Code Annotated 35-1-71 (1953) simply states that for dependencies other than that of the wife and children on the deceased husband, the facts of the case will determine whether dependency exists.

It must be realized that whether a parent is well or handicapped — as is the appellant herein — children have certain obligations or duties to perform "for the family unit." Naturally, it varies from family to family what extent such responsibilities are imposed. Simply because the appellant needs help in doing many things does not by itself mean that the State Insurance Fund proceeds should be paid to him. The purpose of the Workmen's Compensation Act was not to enrich those who didn't need or didn't qualify for help, but to make it possible for individuals who were "dependent" on the injured worker to provide for certain things in life which would enable them to carry on in light of the injuries involved. Since statutory language, as well as court decision, dictates that individual case facts be weighed to

decide dependency, the facts, as interpreted by the Commission, must prevail unless they are clearly to the contrary.

Appellant cites several cases purporting support for his position. A close analysis of them reveals that they are diametrically opposed to the situation within which appellant finds himself. *Daly Mining Company* v. *Industrial Commission of Utah,* 67 Utah 483, 248 P. 125 (1926), did establish that direct financial support need not exist for there to be dependency under the act, as appellant recites. In *Daly*, however, the son's help was found necessary to the plaintiff therein, thereby making it possible for the father to make the farm involved productive and to make payments on the mortgage. The court analyzed the situation as follows:

> . . . the evidence is nevertheless clear that he helped to support the family, and that the applicant, to some extent at least, was dependent upon and relied on the assistance of deceased in developing and paying for the land upon which the family lived. The evidence is also such that the Commission was justified in inferring that deceased, had he continued to live, would have continued to assist the applicant in paying for the land and in developing the same so as to make it productive in the future.

Appellant bases his claim on the fact that he was supported or helped by the deceased, thus making him dependent on his son. Had the appellant relied on Matt's help for payment on the mortgage, purchasing of food

and payment of medical bills, etc., then *Daly, id.*, would control. Everything contributed by the deceased son, however, had no direct relationship to necessary activities as expressed in *Daly*. The Appellant even testified that the reason he paid his bills in person — having his son take him — was to get outside and away from home (R. 38). This is purely a personal desire which has no apparent basis for "dependency status." The record as set forth in the statement of facts of both briefs is full of situations where the son was not required to perform the functions done, but did so to help his father out. Mowing grass, yard work, watering (R. 30) are performed by children of most families. Nothing in the record indicates that this is unique to the appellant. Reading mail and magazines perhaps increases the aesthetic value of the day, but is not all inclusive that a dependency worth compensation exists.

Rigby v. *Industrial Commission*, supra, set forth several criteria upon which cases of dependency must be measured. The appellant's claim must be viewed in light of this Supreme Court directive:

> To entitle plaintiff to compensation in this case, it must affirmatively be made to appear that at the time of the injury (1) plaintiff relied upon his son, in whole or in part, for his support and maintenance; (2) that had the son not been killed plaintiff would in all probability have received some assistance from his son; (3) that it was reasonably necessary for the son to render his father some financial aid in order that

> the father might continue to live in a condition suitable and becoming to his station in life.

Viewed in light of this test, appellant's claim fails to meet the requirements of dependency. The first criteria is "support and maintenance." There is no evidence in the record that the son supported or maintained the parents — the father — in any degree other than acts done to enable the father to care for his personal needs (doctor appointments) or self chosen assignment (caring for his mother's home for several months). The facts establish that the son, though working, was given room and board (R. 95), that the son was reimbursed for gas used in driving the plaintiff around (R. 41), that the plaintiff would not imposed on his son unduly for such things as painting which he would pay someone else to do (R. 47), that the deceased son retained all wages he earned (R. 34). The fact that the family had 6 cars and two trucks (R. 60) which needed "looking after" indicates that there was no necessity of having the son "work on cars," but that it was a family project to have them — much like a hobby. It is, therefore, clear that the plaintiff fails to meet the first requirement of *Rigby*.

As to the second requirement, the testimony given could well be interpreted to establish that the deceased would have continued helping his father in some degree had he not died, although there was a question as to how much help that would be. The deceased was engaged (R. 34), had discussed the help with his fiancee (R. 34) and had come to some agreement with her that *some*

help would be continued. The fact that he had just begun a new full-time job with Architectural Building Supply and was required to travel to places such as Idaho Falls (R. 6) all add to the inference that the help would diminish. Nevertheless, the facts could be read to fulfill requirement two.

Regarding the third criteria, the appellant's action totally fails to satisfy it. Even though *Daly*, supra, refers to non-financial aid, there must be some showing that whatever was offered to the appellant by the son was "reasonably necessary" for the father to manage in his "station of life." The loss of a family member does not change the "station of life," per se. Such terminology refers to the economic, social, and material plateaus. As expressed earlier, that which the deceased did for plaintiff was not based on such necessities. With benefits of nearly $800 per month (R. 25), which were directed solely to the appellant, and the fact that appellant's wife worked full time (R. 32) indicates that the station in life would permit the expenditure of funds for transportation for the activties so conducted by the deceased without affecting this "position." The fact that the appellant reimbursed for gas (R. 41) and would pay others to do painting jobs (R. 47) expressly confirm this analysis.

In *Roller Coaster Co.* v. *Industrial Commission,* 112 Utah 532, 189 P. 2d 709 (1948), cited by appellant, the Commission found that the deceased contributed about 25% of the total family maintenance costs. "That his mother and half-sister were in dire need of his assistance

is obvious," said the court. More important in the case, however, is the holding the court gave regarding this "station in life" proposition:

> Ogden City v. Industrial Commission, 57 Utah 221, 193 P. 857; Utah Fuel Co. v. Industrial Commission, 67 Utah 25, 245 P. 381, 45 A. L. R. 882; John Scowcroft & Sons Co. v. Industrial Commission, [70 Utah 116], 258 P. 339. It is there, in effect, held that compensation should be founded upon the probable financial loss suffered by the dependents on account of the death of the decedent . . .

Though the plaintiff cites *Ogden City*, supra, to support liberal construction for the workman's dependents, such liberality, as pointed out above, depends on *need* and *financial loss suffered*. Neither of these prerequisites have been shown or proven by the appellant.

The respondent, therefore, submits that, based on the foregoing analysis, the Commission's finding that the dependency in this case was not that which was contemplated under the acts should be affirmed.

POINT III.

BECAUSE OF THE FUNDS AVAILABLE TO HIM, THE APPELLANT WAS NOT DEPENDENT ON THE DECEASED FOR MAINTENANCE IN HIS STATION OF LIFE.

As indicated in Point II, this court has consistently referred to "station in life" as a focal point of analysis.

Such a position is based on economic, social, and material requirements of life. *Hancock* v. *Industrial Commission*, 58 Utah 197, 198 P. 169 (1921), quoted an earlier Delaware case regarding the test of dependency. The court quoted as follows:

> It is not sufficient that the contributions of the employe were used in paying the living expenses of the claimant, *but it must be shown that the contributions of the employe were relied upon by the dependent for his or her means of living judging this by the class and position of life of the dependent. . . .*
>
> However, the test of dependency, generally speaking, is whether the claimant relied upon the employe's contributions for his support wholly or partially judging this by what would be reasonable living expenses for persons in the same class and position. Support as used within the meaning of the statute is of a broader import than food, clothing and shelter, and may include all such means of living as would enable the claimant to live in a style and condition and with a degree of comfort suitable and becoming to his station in life. (Emphasis added.)

Contrary to what the appellant alleges, this case, as well as *Rigby*, supra, point out that the mere fact that the necessities are not contributed to by the deceased is not of itself sufficient to deny relief, but that some visible, actual support need be given to help the appellant maintain his position.

The only support of appellant's contention is the

statements made in appellant's brief that the deceased did "acts" which helped the appellant. It is not shown that any of these acts helped the appellant "maintain" his position in life. As pointed out previously, the appellant reimbursed the deceased for travel. To pay for or require someone else to do the same acts would not change the "station" in life or reduce appellant's standard of living. There would be no significant change in finances or custom — merely the change of a new person doing those acts.

As quoted by the appellant in his brief, *Utah Galena Corp.* v. *Industrial Commission*, 78 Utah 492, 5 P. 2d 242 (1931), said:

> It follows that dependency does not depend on whether the alleged dependents could support themselves without decedent's earnings, or so reduce their expenses, so that they would be supported independent of his earnings, *but on whether they were in fact supported in whole or in part by such earnings*, under circumstances indicating an intent on the part of the deceased to furnish such support. (Emphasis added.)

Thus, from appellant's own argument, it is clear that his contention regarding "necessities of life" does not control this case. The record contains no fact that even hints that the deceased contributed any earnings to the appellant. On the contrary, it is clear from appellant's own testimony that they had agreed that the deceased not pay anything (R. 34). Therefore, *Utah Galenda*, *id.*, con-

trols to affirm the Commission's decision since appellant was not "supported in whole or in part by such earnings."

The record is clear that appellant had more than adequate funds to provide for himself, his family, and even his mother's home. The cases cited by appellant refer to "necessities." They do not, however, go as far as the appellant proposes. The cases raise a presumption that if the deceased helps contribute to the "necessities", the individual is dependent. The evidence of this case shows that any presumption of dependency beyond that point is rebutted, thus affirming the holding of the Industrial Commission.

The appellant was not dependent on the deceased for the necessities of life, and he was not dependent on the deceased within the meaning of this court's position of maintenance in his "station in life." The decision of the Hearing Examiner and Commission should therefore, be affirmed.

POINT IV.

DEPENDENCY STATUS AT TIME OF DEATH DICTATES THAT THE APPELLANT WAS NOT ENTITLED TO THE RELIEF HE REQUESTED.

Utah Code Annotated 35-1-71 provides that the question of dependency be determined in accordance "with the facts in each particular case *existing* at the time of the injury resulting in the death of the employee."

Appellant argues that it is not germane to this case that Mark Farnsworth is now performing the functions of his deceased brother. It is a fact that the deceased was contemplating marriage (R. 34) and that he would not be able to carry on with all the activities he had done before marriage (R. 34). It is further a fact that at the time of death, the deceased's other brother was performing services for the father (R. 56-7) and would continue to be home.

These facts were in existence at the time of Matt's death. To say that these facts should be "excluded" from being important to the issue of dependency is to outwardly reject the language of the statute upon which appellant bases his contention.

Can it reasonably be conceived that if parties have plans for the future and one dies in the meantime that those plans are to be disregarded in determining dependency? The respondent contends that the record gives ample supportive evidence for the Commission to decide that at the time of death the parties involved had contemplated future contingencies due to the upcoming marriage of the deceased and that such evidence mandated the decision given.

CONCLUSION

As has been evidenced by the analysis preceding, there was no abuse of discretion by either the hearing examiner of the Industrial Commission in reaching the

decision appealed from. That decision was based on the evidence and testimony given.

The dependency claimed did not fall in the confines of the Workmen's Compensation Act, since the deceased contributed only aesthetic and family help, did not contribute financially, and the appellant's station in life was not changed. The facts at the time of death support this position.

Therefore, the respondent respectfully submits to this court that the decision appealed from should be affirmed.

Respectfully submitted,

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