

1976

Kohler v. The Industrial Commission of Utah : Brief of Appellee

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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REBA KOHLER, Widow of
Harry L. Kohler, deceased,

Plaintiff-Appellant,

vs.

THE INDUSTRIAL COMMISSION
OF UTAH, MIDWAY CITY and
STATE INSURANCE FUND,

Defendants-Respondents.

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

Case No. 14506

BRIEF OF APPELLANT

Plaintiff

Appeal from the Order of The Industrial Commission of the
State of Utah

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FILED

APR 26 1976

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

REBA KOHLER, Widow of)	
Harry L. Kohler, deceased,)	
)	
Plaintiff-Appellant,)	
)	
vs.)	
)	Case No. 14506
THE INDUSTRIAL COMMISSION)	
OF UTAH, MIDWAY CITY and)	
STATE INSURANCE FUND,)	
)	
Defendants-Respondents.))	

BRIEF OF APPELLANT

Appeal from the Order of The Industrial Commission of the
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OF UTAH, MIDWAY CITY and)
STATE INSURANCE FUND,)
)
 Defendants-Respondents.)

Case No. 14506

BRIEF OF APPELLANT

STATEMENT OF NATURE OF CASE

This is an appeal from an award of the Industrial Commission of Utah to determine whether or not Section 35-1-73, Utah Code Annotated, 1953, as in effect on April 16, 1973, which purports to require that Workmen's Compensation death benefits awarded to a widow who is the sole dependent of a deceased employee must be reduced upon her remarriage, is arbitrary and unconstitutionally discriminatory when applied to plaintiff-appellant.

DISPOSITION BY THE INDUSTRIAL COMMISSION OF UTAH

Upon the remarriage of plaintiff-appellant and pursuant to an Order entitled, "Modification of Award Upon Remarriage," the Industrial Commission of Utah reduced plaintiff-appellant's Workmen's Compensation death benefit award in accordance with the terms of Section 35-1-73, Utah Code Annotated, 1953, as in effect on the date of death of plaintiff-appellant's former husband, refusing to consider the constitutionality of said statute as it applied to plaintiff-appellant, claiming it lacked jurisdiction to do so.

RELIEF SOUGHT ON APPEAL

Plaintiff-appellant seeks reversal of the said Modification of Award Upon Remarriage on the grounds that it is based upon Section 35-1-73, Utah Code Annotated, 1953, as in effect on April 16, 1973, which statute is unconstitutionally discriminatory against widows such as plaintiff-appellant.

STATEMENT OF FACTS

The material facts of the case relevant to this appeal are as follows:

1. On April 16, 1973, plaintiff-appellant's

husband, Harry L. Kohler, was injured and died as a result of an accident arising out of and in the course of his employment with the defendant-respondent, Midway City. (Record, 99).

2. Pursuant to the application of plaintiff-appellant and after a hearing in respect thereto, the defendant-respondent, The Industrial Commission of Utah, entered an Order on January 28, 1975, ordering the defendants-respondents, Midway City and/or the State Insurance Fund, to pay plaintiff-appellant, as the widow and sole dependent of Harry L. Kohler, Workmen's Compensation death benefits on the following basis in addition to the statutory funeral allowance and all medical and hospital bills resulting from the injury: 312 weeks at \$51.23 + \$5.00 or \$56.23 April 16, 1973 to end = \$17,543.76. (Record, 99 and 100).

3. On December 2, 1975, plaintiff-appellant was married to Mr. T. K. MacNaughton, and on January 16, 1976, plaintiff-appellant notified the defendants-respondents, The Industrial Commission of Utah and the State Insurance Fund, of her remarriage by filing with them a document entitled, "Notice of Widow's Remarriage." (Record, 103 to

105).

4. On February 13, 1976, the defendant-respondent, The Industrial Commission of Utah, issued an Order entitled, "Modification of Award Upon Remarriage," reducing the benefits payable to plaintiff-appellant pursuant to the provisions of Section 35-1-73, Utah Code Annotated, 1953, as in effect on the date of her former husband's death. (Record, 106 to 108).

5. On or about February 24, 1976, plaintiff-appellant filed a Motion For Review of said Order. (Record, 109 to 111).

6. On March 8, 1976, the defendant-appellant, The Industrial Commission of Utah, issued a denial of plaintiff-appellant's Motion For Review.

7. On March 12, 1976, plaintiff-appellant filed a petition for and this Court issued a Writ of Review in respect to said Order entitled, "Modification of Award Upon Remarriage." (Record, 112 to 121).

ARGUMENT

POINT I.

THE PROVISIONS OF SECTION 35-1-73, UTAH

CODE ANNOTATED, 1953, AS AMENDED AND IN EFFECT AT THE TIME OF DEATH OF PLAINTIFF-APPELLANT'S HUSBAND, ARE UNCONSTITUTIONALLY DISCRIMINATORY AGAINST A WIDOW WHO IS THE SOLE DEPENDENT OF A DECEASED EMPLOYEE AND WHO REMARRIES, IN THAT SHE IS ONLY ENTITLED THEREUNDER TO 1/3 OF THE BENEFITS REMAINING UNPAID AT THE TIME OF REMARRIAGE, WHEREAS A MINOR CHILD WHO IS THE SOLE DEPENDENT OF A DECEASED EMPLOYEE AND WHO MARRIES IS NOT SUBJECT TO THE SAME REDUCTION IN BENEFITS.

Section 35-1-73, Utah Code Annotated, 1953, as amended and in effect at the time of death of plaintiff-appellant's husband provided in pertinent part as follows:

. . . Should a widow, who is the sole dependent of a deceased employee and who is receiving the benefits of this title, remarry during the period covered by such weekly payments, her sole right after such remarriage, to further payments of compensation shall be the right to receive in a lump sum 1/3 of the benefits remaining unpaid at the time of such remarriage. After deduction of the 1/3 payable upon remarriage there being no dependents, one half of the sum of the benefits remaining shall be paid by the employer into the special injury fund as defined in section 35-1-68. Such payment shall be held by the state treasurer for the purposes provided in this title. . .

Laws of Utah, ch. 76, §8 (1971). Extensive amendments to this statute and other Workmen's Compensation Statutes which were made by the 1973 Utah State Legislature are not appli-

cable to this case because said amendments do not apply to a death which occurred prior to July 1, 1973. Laws of Utah, ch. 67, §9 (1973). Plaintiff-appellant's husband died on April 16, 1973. (Record, 4). Accordingly, all references herein to Workmen's Compensation sections of Utah Code Annotated, 1953, relate to the same as they read prior to said amendments.

The portion of Section 35-1-73, Utah Code Annotated, 1953, quoted above is not merely a cruel in terrorem disincentive for a widow to seek the companionship of marriage which disincentive stands in contrast to the general public policy against restraints and derogations of marriage. See, e.g., 17 C.J.S. Contracts §233 (1963); 96 C.J.S. Wills §985 (1957); Utah Code Ann., §30-3-11.1 (Supp. 1975). If this were the only deficiency in the statute, then perhaps plaintiff-appellant should be addressing her grievances to the legislature rather than to this Court. However, such disincentive is not the only deficiency.

It is the position of plaintiff-appellant, as indicated above, that the portion of Section 35-1-73, Utah Code Annotated, 1953, quoted above, is unconstitutionally

discriminatory against a widow who is the sole dependent of a deceased employee and who remarries, in that she is only entitled thereunder to 1/3 of the benefits remaining unpaid at the time of remarriage, whereas a minor child who is the sole dependent of a deceased employee and who marries is not subject to the same reduction in benefits. The marriage of a dependent child does not reduce, change or terminate the rights of such child in the basic award to the family unit. See New Park Mining Co. v. Industrial Comm., 2 Utah 2d 202, 271 P.2d 842 (1954); Davis v. Industrial Comm., 109 Utah 87, 164 P.2d 740 (1945).

Arbitrary discrimination is unconstitutional under the Due Process and Equal Protection Clauses of the United States Constitution and under Article I, Sections 7, 24 and 27 and Article VI, Section 26 of the Constitution of Utah. See, e.g., Weinberger v. Weisenfeld, 95 S.Ct. 1225 (1975); Leetham v. McGinn, Utah, 524 P.2d 323 (1974); Dodge Town, Inc. v. Romney, 25 Utah 2d 267, 480 P.2d 461 (1971); Justice v. Standard Gilsonite Co., 12 Utah 2d 357, 366 P.2d 974 (1961); Gronlund v. Salt Lake City, 113 Utah 284, 194 P.2d 464 (1948); Broadbent v. Gibson, 105 Utah 53, 140

P.2d 939 (1943).

The Utah Supreme Court has uniformly applied the following test in determining whether or not a law is discriminatory in the sense of being arbitrary and unconstitutional:

A legislative classification is never arbitrary or unreasonable so long as the basis for differentiation bears a reasonable relation to the purposes or objectives to be accomplished by the act. If some persons or transactions, excluded from the operation of the law, were as to the subject matter of the law in no differentiable class from those included within its operation, the law is discriminatory in the sense of being arbitrary and unconstitutional.

Leetham v. McGinn, supra, Utah, 524 P.2d at 325; see, also, Justice v. Standard Gilsonite Co., supra; State v. J.B. & R.E. Walker, Inc., 100 Utah 523, 116 P.2d 766 (1941); State v. Mason, 94 Utah 501, 78 P.2d 920, 117 A.L.R. 330 (1938).

The purposes and objectives to be accomplished by the Workmen's Compensation Act have been described by the Utah Supreme Court as follows:

[The Workmen's Compensation Act]. . .

is a beneficent law, passed to protect employees and those dependent upon them; to damnify certain persons because workmen cease to earn wages, and to provide workmen's dependents with something in substitution for what they lost by the workmen's death. The clear intention of the Legislature was "to substitute a more humanitarian and economical system of compensation for injured workmen or their dependents in case of their death," which the more humane and moral conception of our time requires. The act affords, through administrative bodies, injured industrial workmen or their dependents simple, adequate, and speedy means of securing compensation, to the end that the "cost of human wreckage may be taxed against the industry which employs it," which tax or burden is added to the price of the produce and is ultimately paid by the consumer. Thus the Legislature sought to promote the public welfare by relieving society of the support of unfortunate victims of industrial accidents, and to avoid the necessity of the employee's dependents becoming objects of public charity. If there is any doubt "respecting the right to compensation, such doubt should be resolved in favor of the employee or of his dependents as the case may be." . . .

[citations omitted]. Park Utah Consol. Mines Co. v. Industrial Comm., 84 Utah 481, at 485 to 486, 36 P.2d 979, at 981 (1934).

An examination of the foregoing described purposes and objects of the Workmen's Compensation Act leads the

examiner inexorably to the conclusion that there is no rational basis whatsoever relating to such purposes and objects which justifies the discrimination which will result if plaintiff-appellant, as the sole dependent of Harry L. Kohler, is required to forfeit two-thirds of the remaining unpaid balance of the basic death benefit, when a child who is the sole dependent of a deceased employee would suffer no such forfeiture upon his or her marriage.

The fact that a widow's dependency may terminate upon remarriage is totally irrelevant to the question of such discrimination. If the obligations of support placed upon a new spouse relieve a widow from dependency upon her deceased husband, then such obligations also relieve a minor child who gets married from dependency upon his or her deceased father. Furthermore, although the amendments made by the 1973 Utah Legislature to Section 35-1-68(2) of Utah Code Annotated, 1953, (which amendments, as previously indicated, are not applicable to this case) added language which provided that death benefits are "to continue during dependency," such language was not present in said statute prior to said amendments. Laws of Utah, ch. 67, §5 (1973). Prior to said

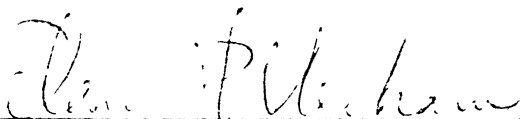
amendments, the law was clear that termination of dependency did not affect the basic award to the family unit. See New Park Mining Co. v. Industrial Comm., supra.

CONCLUSION

Based upon the foregoing argument, plaintiff-appellant respectfully requests this Court to reverse the Order of The Industrial Commission of Utah passed February 13, 1976, and entitled, "Modification of Award Upon Re-marriage," and reinstate the Order passed by said Commission on January 28, 1975.

Respectfully submitted,

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