

1996

Verna Caporoz, Roxsanne Clastimado, Barney
Caporoz v. Guillermo Rodriguez, Margaret
Rodriguez, Willie Rodriguez, Tim Fraga : Reply
Brief

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

DOCKET NO. 960760-CA

VERNA CAPOROS (sister) AND)
ROXSANNE CLASTIMADO (half-sister) of)
BARNEY CAPOROS, Deceased)
Plaintiff(s))
v.)

GUILLERMO RODRIGUEZ and/or)
MARGARET RODRIGUEZ and/or WILLIE)
RODRIGUEZ and/or TIM FRAGA d.b.a.)
HANDYMAN WILLIE (Uninsured) and)
UNINSURED EMPLOYERS FUND)
Defendant(s)

Case No: 960760-CA
Judge: Priority No. 7

PETITIONERS REPLY BRIEF ON PETITION FOR REVIEW OF THE INDUSTRIAL
COMMISSION OF UTAH'S ORDER

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FILED

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ARGUMENT

The Industrial Commission did not apply the Sizemore test

In Sizemore v. Industrial Commission of Utah, 288 P.2d 788 (1955), the court has suggested a 2-part test in deciding dependency. The Sizemore court has indicated the following:

(1)(a) Dependency is primarily a question of fact, except in those cases covered by statutory presumption. While it is difficult to fashion a general definition to cover all situations which might constitute dependency, it should appear that at the time of the injury:

(1) There existed some family or other social relationship giving rise to a legal or moral obligation to support; and

(2) One or more of the following should be answered affirmatively:

a. That claimant relied upon Deceased in whole or in part for support or maintenance.

b. That it was reasonably necessary for the Deceased to render some financial assistance to claimant in order for him to maintain his accustomed standard of living; or

c. That claimant would in all probability have received some assistance from Deceased, had he continued to live.

The Industrial Commission, in its order, notes the Sizemore test. However, in review of the Industrial Commission's analysis, it did not follow the test. There is no analysis by the Industrial Commission whether the Deceased was or was not rendering financial assistance, nor mention of the accustomed standard of living. Furthermore, there was no analysis whether the Deceased was, in all probability, going to continue supporting and assisting the Petitioners. Finally, there was no analysis by the Industrial Commission of whether the Petitioners relied upon

the Decedent for assistance. In Adams v. Board of Review, 821 P.2d 1 (1991), the Court of Appeals requires the Industrial Commission to “make findings of fact and conclusions of law that are adequately detailed to permit meaningful appellate review”. Failure to make appropriate findings make the Industrial Commission’s Order arbitrary and capricious.

In this case, the Applicants met the Sizemore test to determine that they are dependents upon the Deceased. The Applicants had a family relationship and the Deceased assumed a moral obligation to support. The applicants relied upon the Deceased in part for support or maintenance and it was reasonable for the Deceased to render said assistance to his sisters. Had the Deceased not past away, he would have continued to help the Applicants. There is no contrary evidence provided by Respondents.

Marshaling Evidence

The Petitioners have provided the “whole record test” necessary in challenging the Industrial Commission’s Findings of Fact. The Petitioners have marshaled all of the evidence supporting the findings and show that despite the supporting facts, and in light of the conflicting or contradictory evidence, the findings are not supported by substantial evidence. The Court of Appeals has the entire record of the hearing. See Grace Drilling v. Board of Review, 776 P.2d 63 (1989)

Standards of Determining Dependency

The Court of Appeals must utilize a correction of law standard when reviewing the Industrial Commission’s applications of the law. The Petitioners contend that the Industrial Commission did not use the proper standards when it inserts language such as “subsidize” and “significant” when determining dependency.

“Subsidize” means to furnish a subsidy. It does not mean to fully support as alleged by Defendant. According to Webster, a copy of the definition is attached, “subsidize” means to furnish with a subsidy: as a: to purchase the assistance of by payment of a subsidy b: to aid or promote with public money. A “subsidy” is a grant or gift of money as a: a sum of money formerly granted by the British Parliament to the crown and raised by special taxation b: money granted by one state to another c: a grant by a government to a private person or company to assist an enterprise deemed advantageous to the public. In utilizing the standard meaning of “subsidize”, the Industrial Commission has improperly included this requirement as a standard for determining “dependency”. There is no reference in Sizemore or Farnsworth for “subsidize”.

The Industrial Commission has mis-interpreted case law by injecting a second onerous standard. The Industrial Commission blatantly decided, without definition, what forms of support are considered “significant” when determining dependency. Moreover, there is no definition by the Industrial Commission in determining *what is significant and what is not*. In LDS Hospital v. Industrial Commission of Utah, 901 P.2d 1164 (1987) states: “dependency within the meaning of our workers’ compensation statutes does not mean absolute dependency for the necessities of life, but instead means a need for and reliance on the worker’s income to support and maintain the alleged dependent in accordance with his accustomed station in life”. There is no dollar amount determination in order to adjudicate “dependency”. In Roller Coaster Co. v. Industrial Commission, 189 P.2d 709 (1948), the mother and sister were found dependents of the Deceased, even though he only provided some maintenance of the garden and home, and non-periodically paid for food and clothing. Likening Roller Coaster to this case, it is arbitrary to deny benefits when the Deceased, in this case, provided so much more towards the support of the

Petitioners, including but not limited to: regular contributions for food, furniture, vacations, television, vacations, entertainment, vehicles, maintenance of property and vehicles, and security for the family.

Vesting of Compensation Benefits

Public policy should not support Respondents position that one must file an application for hearing, wait 8 to 12 months for a hearing, receive a determination and then wait for the appeal period to be finalized prior to having compensation benefits vest. "The purpose of temporary disability compensation is to provide income for an employee during the time of recuperation from his injury and until his condition has stabilized." Entwistle co. V. Wilkins, 626 P.2d 495 (1981). In Kofoed v. Industrial Commission of Utah, 872 P.2d 484 (1994) the Court of Appeals further explained that "The primary purpose of the Workers Compensation Act is to provide financial security to the injured employee during the period of disability". See also State Tax Comm'n v. Industrial Commission, 685 P.2d 1051 (1984), Wilstead v. Industrial Commission, 407 P.2d 692 (1965) and Croslund v. Board of Review, 828 P.2d 528 (1992). Respondents argue that in order to be entitled to compensation, one must go through the entire process, obtain Findings of Fact, Conclusions of Law and wait through the appeal process prior to be entitled to compensation monies. Only when there is an award, respondents argue, will interest accrue and the injured party can get compensated. This position is ridiculous and onerous. This position would starve out these unfortunate injured workers. It would allow Insurance Companies and Employers to use the Industrial Commission as a shield from paying benefits promptly by stating it needs an award first. Finally, last year in the State of Utah, according to the Industrial Commission, there were over 80,000 industrial injuries. To require each of these injured to file a

claim, have it adjudicated and only then would pay benefits would definitely place a heavy burden on social programs as these injured workers would necessarily rely on welfare. Finally, the Deceased was physically and mentally unable to file a claim. From the date of the accident up to his death, the Deceased was in a coma.

The Respondents claim that the financial woes of the Petitioners are because Verna Caporoz quit her employment while caring for the Deceased following the injury. It is a sad state of affairs when one attempts to superimpose moral duties on people on how they should care for family. The argument that the Petitioners could have left the bedside of their mortally wounded brother is both crass and improper. Moreover, in order to determine the “accustomed manner of living”, one must look at what the manner was prior to the injury. Granted one could compare it with how the accustomed manner of living was following the death, one still must determine whether these bereaved sisters were dependent upon the deceased at the time of the injury. In Farnsworth, the Court was clear the Industrial Commission must look at the relationship “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. (Emphasis added)

CONCLUSION

The Industrial Commission has improperly determined the Petitioners were not dependents within the meaning of the Workers Compensation Act. The Petitioners loved and depended upon their brother. Prior to the injury, the Petitioners enjoyed his loving manner. He supported them

by purchasing and providing food. He maintained the premises and the vehicles. He lovingly took the Petitioners on outings, vacations and for entertainment. It was a good relationship. He was a decent, honest and supporting brother. The Petitioners should be entitled to death benefits.

The Industrial Commission has improperly entered Findings of Fact, Conclusions of Law and Order. There is no proper analysis under the Sizemore test to determine dependency. The Petitioners had a loving relationship with their brother. It was reasonable that he render some financial assistance. He would have continued supporting the Petitioners had this tragic industrial accident not happened.

The Industrial Commission is wrong when it did not award temporary total disability compensation benefits to the Deceased while he was alive. The deceased was in a coma while he was entitled to the benefits. He was physically and mentally unable to file an Application for Hearing, attend a hearing, wait the 8 to 10 months for a Judge's findings and then be "awarded" benefits as the Defendant claims. To have an award vest, as Defendant asserts must happen prior to be entitled to benefits is against public policy and contrary to the intent of the Workers Compensation Act. It would cause needless litigation as it would force all 80,000 injured workers each year to file for benefits prior to being entitled to payment.

Dated this 20 day of May, 1997.

A handwritten signature in black ink, appearing to read "D.W. Parker", written over a horizontal line.

David W. Parker, Esq.
Attorney for Petitioners

CERTIFICATE OF MAILING

I, hereby certify that I mailed, postage pre-paid, two (2) true and correct copies of the foregoing document(s) this 20 day of March, 1997,

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A handwritten signature in black ink, appearing to read "D.W. Parker", written over a horizontal line.

DAVID W. PARKER

'sāb-prō-gram *n* : a semi-independent program (as for a computer)
'sāb-rē-jān *n* [ISV] : a subdivision of a region; primary divisions of a biogeographic region — **'sāb-rē-jān** *adj*
'sāb-rēp-shān *n* [LL *subreption*, *subreptio*, fr. *L. subreptus*, pp. of *subripere*, *surripere* to take surreptitiously] : a deliberate misrepresentation; inference drawn from it — **sub-reptitious** *adj*
'sāb-rēp-ti-tious *adj* : a subset of a mathematical ring which is

ab-rō-gāt *w* **gāt-ed** : **gating** [L *subrogatus*, pp. of *subrogare* — more at **SURROGATE**] : to put in the place of
'sāb-rō-gā-shān *n* : the substitution of one creditor so that the new creditor succeeds to the

designed to be secret or confidential : **SECRETIVE** *adj* [NL, lit., under the rose] : the giving a rose over the council table to indicate that one is in confidence : **SECRETLY** *adv*
'sāb-rō-gā-shān *n* [ISV] : a subordinate routine of computer instructions for performing a specific task repeatedly in a program or in different

'sāb-jēn, **'sāb-jin** *adj* : somewhat salty
'sāb-sam-pāl, **'sām-pāl** *vt* : to draw samples from (a group or population) : sample a sample of
'sāb-sat-ī-jē *n* : an object carried into orbit released from a satellite or spacecraft
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'sāb-sid-ē-er-ē, **'sāb-sid-ē-rē** *adj* [L *subsidiarius*, fr. *modium* reserve (troops)] 1 *a* : furnishing aid or support : **AUXILIARY** (*details*) *b* : of secondary importance : **TRIBUTARY** (*a tributary*) 2 : of, relating to, or constituting a subsidy (*a ~ payment to an ally*) — **sub-sid-er-er-ē** *adv*
'sāb-sid-er-er-ē *n*, *pl* *-aries* : one that is subsidiary; *esp* : a company wholly controlled by another
'sāb-sid-er-er-ē *n* : the act of subsidizing

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: being a totally independent entity 2 *a* : real rather than apparent : **FIRM**; also : **ENDURING**; **PERMANENT** *b* : belonging to the substance of a thing : **ESSENTIAL** *c* : betokening or expressing existence (the ~ verb is the verb to be) *d* : requiring or involving no mordant (*a ~ dyeing process*) 3 *a* : having the nature or function of a grammatical substantive (*a ~ phrase*) *b* : relating to or having the character of a noun or pronominal term in logic 4 : considerable in amount or numbers : **SUBSTANTIAL** 5 : creating and defining rights and duties (*~ law*) — **sub-stan-ti-er-ly** *adv* — **sub-stan-ti-er-ly** *adv*

sub-stan-ti-er-ly *adv* : to furnish with a subsidy; as *a* : to purchase the assistance of by payment of a subsidy *b* : to aid or promote (as a private enterprise) with public money (*~ a steamship line*) — **sub-sid-er-er-ly** *adv*
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