

1979

Carol Starr, Mother of Ronald Dean Broderick,
Deceased v. Industrial Commission of Utah, Pepsi
Cola Bottling Company and State Insurance Fund :
Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE
STATE OF UTAH

CAROL STARR, Mother of)
RONALD DEAN BRODERICK,)
Deceased,)
)
Plaintiff)
and Appellant,)
)
v.)
)
INDUSTRIAL COMMISSION OF)
UTAH, PEPSI COLA BOTTLING)
COMPANY and STATE INSURANCE)
FUND,)
)
Defendants)
and Respondents.)
)

CASE NO. 16378

BRIEF OF APPELLANT

Appeal From Final Order Of
Industrial Commission Of Utah

The Honorable Keith E. Sohm
Administrative Law Judge

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FILED

AUG 24 1979

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IN THE SUPREME COURT OF THE
STATE OF UTAH

CAROL STARR, Mother of)
RONALD DEAN BRODERICK,)
Deceased,)
)
Plaintiff) CASE NO. 16378
and Appellant,)
)
v.)
)
INDUSTRIAL COMMISSION OF)
UTAH, PEPSI COLA BOTTLING)
COMPANY and STATE INSURANCE)
FUND,)
)
Defendants)
and Respondents.)
)

STATEMENT OF THE KIND OF CASE

This is an Appeal from the Final Findings and Order of the Industrial Commission of the State of Utah denying to the Appellant any right of participation in the proceeds paid by the State Insurance Fund, as a result of the death of the decedent while employed by an employer insured by the State Insurance Fund and wherein the proceeds from the insurance were paid to the State of Utah and not to the estate of the decedent or to the Appellant.

DISPOSITION IN ADMINISTRATIVE HEARINGS

On determination of the State Industrial Commission, of the State of Utah, that the decedent was in fact employed by

Pepsi Cola Bottling Company and was fatally injured during the course of his employment, the State Insurance Fund was ordered to pay the proceeds of the moneys to be paid by the State Insurance Fund because of the death of the employee, who was the son of the Appellant, to be paid to the State Treasury of the State of Utah.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the Order of the State Industrial Commission upon the grounds that the provisions of § 35-1-68(6) of the Utah Code Annotated, as amended, is unconstitutional based upon the Constitution of the State of Utah and the Constitution of the United States, or as an alternative that the Court find the appellant is a "dependent" within the meaning of the statute.

STATEMENT OF FACTS

The Appellant will hereinafter be referred to as the "Mother" and references to the "decedent" are to Ronald Dean Broderick, son of the Appellant.

In accordance with the Findings of Fact, Conclusions of Law, and Order of the Industrial Commission of Utah, there is no disagreement that the decedent was employed by the Pepsi Cola Bottling Company and that during the course of his employment, he was driving one of his employers' trucks.

and received fatal injuries in a collision, occurring on July 25, 1978 while so employed by the employer, who is the insured (R-28).

The decedent was a twenty-two (22) year old unmarried man who was living at home at the time of his demise and made regular contributions of \$100.00 a month to his Mother, and in addition to the payment of the \$100.00 a month, made substantial other contributions to the support and maintenance of the Mother and his minor brothers and sisters, as well as performing the acts consistent with an elder son and brother and the assumption of his duties as a family member and offering care and comfort to his Mother and his brothers and sisters (R-2829).

ARGUMENT

POINT I.

PAYMENT OF PROCEEDS PAYABLE BY AN INSURANCE CARRIER FOR THE WRONGFUL DEATH OF AN EMPLOYEE CANNOT BE VESTED IN THE STATE OF UTAH

In Cudahy Packing Company of Nebraska v. PARRAMORE, et al., 263 U.S. 418, 44 S.Ct. 153 (U.S. S.Ct., 1923), the court ruled upon the right of a State to establish Workman's Compensation Legislation based upon the status of the parties other than that of implied contract and stated:

Upon the conception that the injured work-man is entitled to compensation for an injury sustained in the service

of an Industry to whose operations he contributes his work as the owner contributes his capital - the one for the sake of the wages and the other for the sake of the profits. The liability is based, not upon any act or omission of the employer, but upon the existence of the relationship which the employee bears to the employment because of and in the course of which he has been injured. . . . Legislation which imposes liability for an injury thus related to the employment, among other justifying circumstances, has a tendency to promote a more equitable distribution of the economic burdens in cases of personal injury or death resulting from accidents in the course of Industrial employment and is a matter of sufficient public concern to escape condemnation as arbitrary, capricious, or clearly unreasonable.

The Supreme Court of the United States therefore recognizes the basic principle of limiting the rights of the injured or deceased workman, by limiting his recovery to a known insurable factor which may be insured against by the employer, and imposes an insurable liability to be paid by the employer and his insurer to the employee or his survivors.

The Constitution of the State of Utah at the time of its adoption set forth in Article 16 Section 5 and provided as follows:

The right of action to recover damages for injuries resulting in death shall never be abrogated and the amount recoverable shall not be subject to any statutory limitation.

Prior to the enactment of the Workman's Compensation Law, the rights of an employee, as against the liability of an employer were matters to be interpreted under the adopted common law, if there were no repugnant statutes to such, enacted by the State of Utah or in the provisions of the Constitution of the State of Utah.

The Legislature of Utah has been vested by the Constitution of this State as having the exclusive right to enact law, and accordingly enacted § 68-3-1 Utah Code, Annotated, as amended, wherein as stated:

The Common Law of England so far as it is not repugnant to, or in conflict with the Constitution and Laws of the United States, or the Constitutional Laws of this state. . . is hereby adopted, and shall be the rule of decisions in all Courts of this state.

The Utah Supreme Court recognizes the Common Law of England as being that law as of the date of the Declaration of Independence, of July 4, 1776.

The Workman's Compensation Act was adopted in Utah in 1917 and its intent and purpose was to replace the Fellow-Servant Rule of Common Law and the limitations of the doctrine of respondeat superior and to provide a system for payment of benefits from injury and/or death of an employee, with a minimum requirement of fault and hindrance from the rules of causation, with the intent that industry shall, through the purchase of insurance, or under certain restrictions as a self-insurer, consider the cost of such liability

in the pricing of products for the operation of its business, so as not to leave the injured employee at the mercy of charity and provide for the widows and fatherless children, and to provide for the payment of the proceeds of such insurance to the beneficiaries of the decedent.

The intent of the enactment of the Workman's Compensation Law was set forth in Utah Copper Company v. Industrial Commission, 193 P.24, Utah S.Ct., (October 22, 1920), when the Court stated:

The recent history of the enactment of the law in question justifies a Court in saying that the recognized and known intent of the legislature was to secure compensation to injured employees or to their dependents in case of death, whether such injury or death resulted from the negligence of the employer or was purely accidental. Also, it was the intent to secure such compensation without delaying, and without the expense and annoyance of a suit at law. An administrative body, to-wit: a commission, was created primarily to enable injured employees, or dependents of such employees, when death ensues to obtain such relief without delay and without having to resort to the uncertainties and expenses of litigation.

A special session of the Utah Legislature was called in 1919, by the then Governor of the State of Utah, Simon Bamberger, and he placed before the special session the matter of enacting an amendment to the constitution, as set forth in Article 16 Section 5, for the purposes as set forth in the message by the Governor, wherein he stated:

Another matter which I believe merits your consideration, in the interest of widows and fatherless children, is an amendment to the Constitution, repealing that section which provides that "right of action to recover damages for injuries, resulting in death, shall never be abrogated, and the amount recoverable shall not be subject to any statutory limitation." The existence of this provision, I believe, militates against sufficient operation of our law governing compensation insurance, resulting in an estimable loss to beneficiaries, and I would approve a resolution submitting the question to the vote of the people at the next regular election.

An amendment was voted upon and became effective January 1, 1921, wherein Article 16, Section 5 was amended by adding to the previously stated section of the constitution the phrase, "Except in cases where compensation for injuries resulting in death is provided for by law."

The enactment of the amendment and the basis for its concept and adoption by the people was in the interest of the survivors of the decedent and not in the interest of employers and insurance carriers, and the intent of the constitutional amendment, and the intent of the legislature, and the people in adopting an amendment to the constitution, must be interpreted in light of the representation made to the legislature and to the people, as to the purpose and function of this amendment. It was not intended to broaden the scope of employers to avoid liability in derogation of the Common Law nor in depriving the interest of the survi-

vors of the employee and decedent by providing income to the State of Utah, resulting from the demise of an employee whose death occurs 'in the course of his employment and thereby depriving his lawful survivors from legal redress for the loss of a loved one and a family member, nor was the law intended to provide windfall insurance benefits to the State of Utah where there are identifiable and valid claimants to the proceeds of the liability insurance.

This Court stated in Gammon v. Federated Milk Producers, 12 Utah 2d 199, 364, P.2d 417, (August, 1961):

Constitutional provisions must be given an interpretation which is sensible and realistic in its application to the affairs of life. To achieve that result, it is necessary to look to the background which produced it and the purpose sought to accomplish.

The Supreme Court of Utah stated in Spence v. Utah State Agricultural College, 225 P.2d 18 (December, 1950):

A State Constitution is in no manner a grant of power, it operates solely as a limitation on the legislature and an act of that body is legal when the constitution contains no prohibition against it. . . Terms used in the constitution must be taken to mean what they meant to the minds of the voters of the State when the provision was adopted. (Emphasis added.)

In Ortega v. Salt Lake Wet Wash Laundry, 108 Utah, 1, 156 P.2d 885, (February, 1945), this Court established the public policy of the Workman's Compensation Scheme in Utah and stated:

The Compensation Act, first enacted in 1917, is predicated upon the police power, the right of the state to regulate the status of employer and employee, for the general welfare of the people of the state. . . It is not a beneficent act, passed to protect employees, and those dependent upon them.

It is submitted that the legislature of the State of Utah has the right to abrogate a Common Law right of action, but all legislative acts must be within the clear perimeters of activity not in conflict with the Constitution of the United States nor the Constitution of the State of Utah. The Constitution of the State of Utah as set forth in Article 1 Section 7 thereof and as set forth in the Fourteenth Amendment to the United States Constitution in Section 1 thereof, prohibits any person from depriving another of property without due process of law, which is also coupled with the constitutional provisions of the State of Utah under Article 16 Section 5 thereof, providing that the right of action to recover damages for injuries, resulting in death shall never be abrogated.

The historical background of the enactment of the Workman's Compensation right is destroyed and impugned by awarding the payment of moneys paid by an insurance carrier because of the wrongful death of an individual, to the State of Utah, all in derogation of the rights of the survivors of the decedent of their Common Law and constitutional right of seeking redress for a wrongful death and making the Work-

man's Compensation Act a tool of enrichment to the State, rather than carrying out which this Court held in North Beech Mining Company, et al. v. Industrial Commission of Utah, 260 P.111 (1921), the Court held:

The Industrial Act, including the procedure therein provided, must be liberally construed, and with the purpose of effectuating its beneficent and humane objects. (Emphasis added.)

In Park Utah Consolidated Mines Company v. Industrial Commission, 36 P.2d 979 (1934), the Court upheld the right of a Mother, brothers, sisters and grandmother to be the beneficiaries of a compensation proceedings for the death of an employee.

Utah Fuel v. Industrial Commission, 57 Utah 246, 193 P.122, held that the Workman's Compensation Law was predicated on the police power and inherent in every sovereignty - the power to legislate and to govern for the best interest of the State, and in Woldberg v. Industrial Commission, 74 Utah 309, 279 P.609, the Court held:

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 death.

The holdings of this Court in Industrial Commission v. Daly Mining Company, 172 P.301; Industrial Commission v. Evans, 174 P.825; Garfield Smelting Company v. Industrial Commission, 178 P.57, all point towards the constitutional right of the legislature to enact a Workman's Compensation

Law having the object to secure compensation to an injured employee or those dependents upon one killed by accident, but no where can there be found justification for payment of the funds resulting from the wrongful death of an individual to the State of Utah, with the loss of the estate and or family of the decedent, at the expense of the unjust enrichment of the State. The entire concept of the Workman's Compensation Act was to impose a charge upon industry (the employer) which burden would be passed on to consumers and the total intent of the act was to protect both the industry and the employee to stabilize the cost of production with the only goal being compensation at a statutory amount to be paid to the employee or his survivors.

POINT II.

THE AWARD OF THE PROCEEDS OF THE INSURANCE CARRIER BY THE INDUSTRIAL COMMISSION OF UTAH TO THE TREASURER OF THE STATE OF UTAH IS NOT RES JUDICATA AS TO THE RIGHT OF ACTION OF THE MOTHER, BROTHERS, AND SISTERS OF DECEDENT

Article 16 Section 5 of the Utah Constitution giving a right of action to recover damages for injuries resulting in death and stating that same shall never be abrogated and the amount recoverable is not subject to any statutory limitation, cannot be effected by making an award after a finding of the wrongful death of the decedent and paying same by the

insurance carrier to the State of Utah as depriving the surviving Mother and the five brothers and sisters of the decedent from seeking recovery against the employer and others by reason of such wrongful death.

The right to recover damages for the death of anyone, being guaranteed by the constitution, is founded upon the neglect or failure of duty on the part of the employer or individual causing the injury resulting in death and the Industrial Commission of Utah, having found that there is no question as to the death of the decedent while an employee of the insured, (R 15) and the further finding of an admission of liability of the State Insurance Fund for the payment of insurance proceeds resulting from the death of the decedent (R-14) cannot be paid to the State of Utah as settlement for the personal loss incurred by the Mother and the five brothers and sisters who lawfully filed a claim for dependents benefits (R-7) and have been totally ignored by the payment of the proceeds of the insurance policy to the State of Utah.

The record before the Court and which was before the Industrial Commission, evidences testimony that in addition to the decedent contributing not less than one-hundred (\$100.00) dollars a month to the Appellant (R-17) and the continual contribution of other funds by the decedent to the Appellant (R 18, 19). The decedent also performed substantial

tial services to his brothers and sisters as well as monetary contributions (R-22) and that the finding by the Industrial Commission which is in confirmation of the facts above (R-28-R-31) did not require the Commission to make a finding that support meant total lack of dependency on the contributions of the decedent for the maintenance and support of those claiming under the provisions of the Workman's Compensation Act, but requires only a finding that there was a valid contribution by the decedent to the Appellant and that such contribution, standing by itself, justified an award to the Appellant and not to the State of Utah of the proceeds of the policy of insurance.

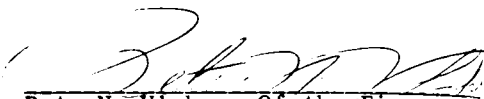
CONCLUSION

It is submitted to this Honorable Court that there was no intent under the law by depriving a decedent of the right of suit, or by depriving his estate or family a right of action as against an employer, that upon the finding of a decedents demise occurring as a result of his employment, the funds recoverable from an insurance carrier are payable to those who have been deprived of the support and services of the decedent who are entitled to be compensated for same by the proceeds from the insurance carrier and that the statute authorizing payment of proceeds to the State of Utah, in lieu of the Common Law Beneficiaries of the

decendent, is an unconstitutional statute and in the alternative if the statute is constitutional in return for being deprived of a Common Law Right of Action, the term "Dependent" must be of such liberal interpretation as would justify payment of the proceeds of the policy of insurance to the Appellant herein.

RESPECTFULLY SUBMITTED BY:

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21 day of August, 1979, I mailed a true and correct copy of the foregoing Brief of Appellant, postage prepaid and addressed to Timothy Houpt, Esq., Suite 500, Ten West Broadway, Salt Lake City, Utah, 84101, Attorney for Respondents.


SECRETARY