

1979

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

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-Appellant, :
 :
vs. :
 :
INDUSTRIAL COMMISSION OF :
UTAH, PEPSI COLA BOTTLING :
COMPANY and STATE INSURANCE :
FUND, :
 :
Defendants-Respondents. :

Case No: 16378

BRIEF OF RESPONDENT STATE
INSURANCE FUND

Appeal From Final Order of
Industrial Commission of Utah

The Honorable Keith E. Sohm
Administrative Law Judge

FILED

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BRIEF OF RESPONDENT STATE INSURANCE FUND

NATURE OF THE CASE

This is an appeal from the final order of the Industrial Commission of Utah denying the appellant compensation benefits for the death of her son on the basis of the Commission's finding that she was not a dependent of her son within the meaning of the Workmen's Compensation Act.

DISPOSITION BY THE INDUSTRIAL COMMISSION

A hearing was held in this matter before Administrative Law Judge Keith E. Sohm who found that the applicant was not

a dependent of the decedent as defined by the Workmen's Compensation Act. The Industrial Commission thereafter ordered the respondent insurance carrier to pay the sum of \$15,600 to the Special Fund pursuant to Section 35-1-68 Utah Code Annotated, which provides that in the case of an industrial injury causing death where the deceased has no dependents benefits are to be paid to the Special Fund. The defendant was also ordered to pay burial expenses for the deceased in the statutory amount.

RELIEF SOUGHT ON APPEAL

The Respondent respectfully requests the Court to affirm the order of the Industrial Commission.

STATEMENT OF FACTS

Ronald Dean Broderick, the decedent, was employed as a driver by the Pepsi-Cola Bottling Company and died on June 25, 1978 as a result of injuries he sustained in a collision which occurred in the course of his employment.

At the time of his death, the decedent was 22 years old, unmarried and living at home with his mother, stepfather, five brothers and sisters and two stepbrothers and sisters. (R. 16). He earned approximately \$1000 a month (R. 23) of which he contributed to his mother, according to her testimony \$100 a month in cash for his own room and board. The appellant employed at the time earning \$6,444 a year (R. 19) and her husband was employed earning \$11,500 a year. (R. 21) One of the appellant's other sons was employed earning minimum

wages which he spent for his own school clothes and needs (R. 24).

The decedent had given his mother \$200 to buy a micro-wave oven shortly before his death which the appellant testified she would have been able to purchase anyway (R. 18-19). She also testified that she thought she and her husband could have purchased things, bought food and done things on the same basis without the money contributed by her son. (R. 19) She stated that she was not so much dependent on the money her son contributed as she was dependent on him personally. (R. 22)

ARGUMENT

POINT I

THE APPELLANT WAS NOT DEPENDENT ON THE DECEASED FOR FINANCIAL SUPPORT AND IS NOT ENTITLED TO COMPENSATION FOR HIS DEATH.

By her own testimony, the appellant was not a dependent of the decedent within the meaning of the Workmen's Compensation Act.

Section 35-1-71 Utah Code Annotated 1953 as amended 1977 provides that minor children and surviving spouses are presumed to be dependents of a deceased worker. The statute further provides that

In all other cases, the question of dependency in whole or in part, shall be determined in accordance with the facts in each particular case existing at the time of injury or death.

This Court frequently has considered the question of dependency in claims which are not subject to the statutory presumption. Recently, the Court reiterated the legal test which has consistently been applied in cases such as this one.

In Farnsworth v. Industrial Commission, 534 P.2d 897 (Utah 1975), a case in which a father claimed dependency on his son, Justice Maughan quoted the rule as stated by the Court in Rigby v. Industrial Commission, 75 Utah 454, 458, 286 P.628 (1930)

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.

The Court in Farnsworth summarized the relevant principle by observing that dependency within the terms of the statute means

that the applicant looked to and relied on the contributions of the workman, in whole or in part, as a means of supporting and maintaining himself in accordance with his social position and accustomed mode of life.

The appellant's testimony before the Commission established the validity of the Commission's finding that she was not dependent upon her son for support. She admits that his contributions were made for his own room and board, that she could have maintained the same standard of living without his

contributions, and that her real dependency on her son was for emotional support.

The appellant gave the following testimony in response to questioning from her counsel.

Q And were any funds being paid by your son to you?

A He paid a hundred dollars a month that was for his room and board.

It is well established that payments made by a decedent for his own living expenses are not contributions to his family's support. In Utah Fuel Co. v. Industrial Commission, 67 Utah 25, 245 P. 381, 386 (1926) a mother applied for benefits as a dependent of a deceased son who lived at home on the basis of contributions made by him to the family. This Court ruled that the cost of the decedent's own support should be deducted from the amount he regularly tendered his mother to determine the contribution from which dependency could be established.

"The commission should have carefully considered the cost of maintaining the deceased son in connection with the cost of maintaining the whole family, and should also have considered to what extent he assisted his mother in maintaining the household and the pecuniary benefits, * * * and should have determined the monetary value of all the foregoing elements, and, after doing that, it should have deducted the actual cost of maintenance therefrom, and the difference remaining, if any, should have been taken as the basis for fixing the amount of the award."

This is the general rule as reported by Professor Larsen in 2 Larsen Workmen's Compensation Law §63.12, p. 11-68 and §63.22, p. 11-82.

. . . it has frequently been held that, if the decedent's contribution is offset by the value of board and room received, he is doing no more than to 'pull his own weight'; he is merely supporting himself, with nothing left over to represent support of dependents. . . . the key fact is that the same event which deprives the claimant parent of a source of income also removes a source of expense.

In the instant case no evidence was received about the value of the decedent's board and room. However, the applicant herself testified that the payment by the decedent of \$100 a month was "for his room and board." Undoubtedly the decedent's room and board could be valued at \$100 a month, if not more.

The Court has noted that where the Commission makes no findings about the cost of the decedent's maintenance, this Court may do so by inference from the record. Utah Fuel Co. v. Industrial Commission, supra; Park Utah Consol. Mines Co. v. Industrial Commission, 84 Utah 81, 36 P.2d 979 (1934). Such an evaluation in this instance compels the conclusion that the decedent's \$100 monthly contribution is offset in whole or in substantial part by the value of his own room and board.

This view of the nature of the decedent's contributions is corroborated by the appellant's testimony in response to questioning about the focal issue of her claim.

Q This particular money that you received from your son, if you were not to receive it, if he hadn't given you this hundred dollars a month plus the extras, would you have been able to live an [sic] purchase things and buy food and do things on the same basis without that money?

A Yes. It would have been harder but I think we could have. (R. 19)

Earlier, the appellant stated that her son had purchased their family a microwave oven before he died. On that subject she testified as follows:

A . . . two weeks before he died he gave me his two hundred dollars out of his last paycheck.

Q What did he give you that for?

A To buy me a stove.

Q Would you have been able to buy this stove if he hadn't given you the \$200?

A Yes, but we just hadn't done it. (R. 18)

The appellant testified that she and her husband would have been able to purchase things, buy food and do things on the same basis without the room and board money they received from her son. She testified that even luxury items like a microwave oven could have been acquired as easily without the occasional gifts she received from her son. She has, in effect, directly admitted that her son's contributions were not necessary for her own support and that her family could have lived in the style to which they were accustomed without his contributions.

In view of the fact the appellant and her husband had a combined income of nearly \$19,000 at the time of the accident it is not surprising that she would admit that her son's payments were not needed to maintain them in their usual style of life. In Hancock v. Industrial Commission, 58 Utah 192, 198 P.169 (1921) this Court ruled that contributions by a deceased son to his parents which averaged \$25.00 a month did not establish

dependency in whole or in part because his father's income of \$100 a month was sufficient for his family's usual style of life.

By her own admission, the appellant cannot satisfy the criteria of dependency in fact.

In truth, the appellant's dependency on her son was of another variety, one which undoubtedly made his loss the more profound but one for which the law of Workmen's Compensation affords no remedy.

Q Carol, looking back in this situation and prior to the time that your son was in this accident, did you feel that you were somewhat dependent upon the money that came to the household from him?

A Not so much the money as I was on him. When his father was killed, Ron was 11 years old so we were dependent on each other. He was always there when I needed him.

The case of Farnsworth v. Industrial Commission, supra, closely resembles the case at bar in this regard. The applicant was blind and relied on his 19 year old son for support and services such as reading him his mail, driving him to medical appointments and on other errands, and performing yard work and chores around the house. In ruling that contributions of this sort did not create a dependency which is compensable under the Act, the Court concluded

In the instant action, the assistance rendered by decedent to his father was not comparable to financial assistance to maintain him in his accustomed station in life. It was greater, it was the love, affection, and companionship of a dutiful child; and deserving of the highest commendation.

Such assistance, as is here shown, commendable as it is, does not establish dependency within the Workmen's Compensation Act, the purpose of which is to provide compensation for the probable financial loss suffered by dependents on account of the death of the decedent.

The Commission did not err in finding that the appellant was not a dependent of her deceased son, substantial evidence supports their conclusion and there is no basis in the record for reversing the order entered.

POINT II

THE DENIAL OF BENEFITS TO THE APPELLANT IS CONSISTENT WITH THE PURPOSE OF THE WORKMEN'S COMPENSATION ACT AND THE UTAH CONSTITUTION.

The appellant contends that since the Workmen's Compensation Act was enacted to benefit workers and their families the denial of benefits to the appellant and the award of benefits to the Special Fund pursuant to Section 35-1-68 Utah Code Annotated was contrary to the purpose of the Act. She also contends that since Article XVI Section 5 of the Constitution of Utah provides that the right to an action for wrongful death shall not be abrogated except where compensation is provided for by law, she is guaranteed the right to compensation for her son's death or a right of action against his employer for wrongful death. Both contentions are completely without merit.

The purpose of the Workmen's Compensation Act in providing benefits in cases of death was reviewed by this Court in the case of Farnsworth v. Industrial Commission, supra, discussed earlier. As noted, Justice Maughan stated that the purpose of the Act

is to provide compensation for the probable financial loss suffered by dependents on account of the death of the decedent.

(Emphasis Added)

Farnsworth, supra, 534 P.2d at 900. The authority cited by the appellant in her discussion about the original intent of the Act is to the same effect. The appellant quotes from the Court's statement in Utah Copper Company v. Industrial Commission, 193 P. 24 (Utah 1920) wherein the Court also explains that benefits were intended in cases of death for dependents only.

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. (emphasis added)

The very question raised by the appellant was the subject of a decision by this Court in the case of Henrie v. Rocky Mountain Packing Corporation, 113 U 415, 196 P.2d 487 (1948) rehearing denied, 113 U. 444, 202 P.2d 727. That action was brought by a non-dependent father who was denied death benefits by the Industrial Commission and sued his son's employer for wrongful death. Explaining the purpose of the compensation scheme in death cases, Justice Wolfe observed that

The intention of the Acts, then was to secure workmen and their dependents (not heirs or personal representatives) against becoming objects of charity, by making reasonable compensation for calamities incidental to the employment and to make human wastage in industry part of the cost of production. (Emphasis Original)

Henrie, supra, 196 P.2d at 493.

The denial of benefits to the appellant and the payment of benefits to the Special Fund is in no way inconsistent with the purpose of the Workmen's Compensation Act. The Act compensates those who were dependent in fact

on the decedent for support for actual financial losses just as in all its other provisions the Act attempts to compensate actual pecuniary losses. Non-dependent survivors are not persons whom the benefits of Workmen's Compensation were intended to reach and an award of benefits to a non-dependent would contradict the whole purpose and scheme for the Act. And, as the appellant has been denied nothing to which she is entitled, she has no standing to complain that the legislature chose to finance the Special Fund by requiring payments to it where no dependents survive a deceased worker.

The appellant contends, additionally, that since Article 1 Section 5 of the Constitution prohibits abrogation of the right to bring an action for wrongful death, "except where compensation for injuries resulting in death is provided for by law," she is entitled to death benefits or to an independent action for wrongful death against her son's employer.

The question whether the Commission's order denying the appellant death benefits bars an action against the defendant employer for wrongful death is not properly before the Court. It is axiomatic that on appeal from an order of the Industrial Commission this Court acquires jurisdiction solely to determine the lawfulness of the Commission's order, Section 35-1-84, Utah Code Annotated, and its collateral effect can only be determined in another forum. The appellant apparently suggests, however, that the constitutional provision referred to in some way affects the validity of the Commission's denial of benefits to her and alternative award to the Special Fund.

This issue was directly presented in the case of Henrie v. Rocky Mountain Packing Corporation, supra, discussed above. As noted, an action for wrongful death against his son's employer was brought by a non-dependent father who was denied benefits by the Commission. The defendant employer contended that the action was barred by his payment of benefits to the Commission and payment of the decedent's burial expenses. The plaintiff argued, as does the appellant in the instant action, that Article XVI Section 5 of the Utah Constitution prohibited abrogation of his right to sue for wrongful death where he had been denied death benefits, and that he was entitled to benefits in one forum or the other.

The Court in Henrie agreed with the defendant employer that the action was barred and construed the limiting provision of Article 1 Section 5, "except where compensation for injuries is provided for by law," to mean that a right of action against an employer for wrongful death can be barred by the legislature whenever the death is one which subjects the employer to the compensation obligations of the Workmen's Compensation Act. In other words, the legislature is empowered to substitute the compensation scheme as a whole for the common law action for wrongful death against an employer. Given that power, the legislature is at liberty within the compensation system to deny death benefits to non-dependents as it did by Section 35-1-73 while barring the non-dependent from bringing an action for wrongful death as it did by Section 35-1-74 without infringing on the non-dependent's constitutional right by either limitation. The payment by the employer of burial

expenses and benefits to the state treasury pursuant to the requirements of the Act is the providing of compensation which brings the case within the exception to Article XVI Section 5, as Justice Wolfe explained, even though neither payment directly benefits the non-dependent survivor.

Plaintiff contends that because the money paid by defendant or its insurance carrier into the state treasury did not benefit him, it was not compensation within the meaning of Article XVI, Section 5 of the Constitution. Viewed in the light of the history of that section of the Constitution and of the Workmen's Compensation legislation, the contention is untenable. The amendment to the Constitution was not designed or intended to preserve all of the rights formerly guaranteed, and also to create new rights. On the contrary its very purpose was to abrogate some of the rights formerly held by persons entitled to sue under the wrongful death statute. "Compensation", as used in the amendment to the Constitution, means the same as it is used and defined in the compensation act, i.e. any payment required by the act to be made to a workman or to his dependents, or for their benefit, or into the state treasury for the special purposes of the compensation act. This includes disability payments, death benefits, medical and hospitalization expenses, burial expenses, and payments into the state treasury as provided by the act. Compensation does not connote or require payment to, or for the direct benefit of a non-dependent parent, who would have been able to maintain an action for wrongful death prior to the amendment to the state Constitution. The payment of part of decedent's burial expenses and of \$1,000 in the state treasury in accordance with the order of the Industrial Commission, and as provided by statute, was payment of "compensation" within the meaning of Article XVI, Section 5, of the Constitution. Plaintiff has no constitutional or statutory right to maintain this action.

Henrie, supra, 196 P.2d at 493.

In summary, there is no merit to the appellant's contention that the Commission's order violates the spirit and purpose of the Compensation Act. Its purpose is to compensate

workers and their dependents for actual financial losses and the Commission found that the appellant has sustained no compensable financial loss as a result of her son's death. Likewise, there is no merit to her contention that Article XVI, Section 5 guarantees her compensation benefits or a right of action against the employer for damages as this Court has ruled that the provision allows the legislature to substitute the payment of compensation benefits for the wrongful death action against the employer even where the compensation benefits do not directly benefit the survivors.

CONCLUSION

The appellant and her family were not dependents of the decedent because their own income was sufficient to maintain them in their accustomed style of life. The decedent's contributions were not needed for his family's support and represented payment of his own living expenses. The appellant's testimony provides a substantial basis for the Commission's finding and there is no contrary evidence in the record which would justify a reversal of the order entered.

A denial of benefits to a non-dependent does not violate the purpose of the Act but is, in fact, mandated by the theory of Workmen's Compensation. The statutory manner of supporting of the Special Fund by payments from employers in cases of death where no dependents survive does not affect the appellant's right and is a reasonable exercise of legislative discretion.

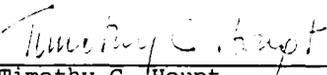
The appellant's right to bring a wrongful death action against the decedent's employer is not in issue on this appeal.

as it can only be tested by the collateral action itself.
However, this Court has ruled that Article XVI, Section 5 of
the Utah Constitution allows the Workmen's Compensation Act
to be substituted for a wrongful death action against an
employer and that non-dependents are deprived of no constitutional
right by their statutory ineligibility for death benefits.

Respectfully submitted this 19 day of September, 1979.

BLACK & MOORE

By



Timothy C. Houpt

CERTIFICATE OF MAILING

I hereby certify that two true and correct copies of the
foregoing BRIEF OF RESPONDENT STATE INSURANCE FUND were mailed
to Frank V. Nelson, Assistant Attorney General, State Capitol
Building, Salt Lake City, Utah 84114 and to Peter N. Vlahos,
2447 Kiessel Ave., Ogden, Utah 84401, postage prepaid this
_____ day of September, 1979.
