

1955

Maybell F. Sizemore et al v. George Newell Jensen et al : Brief of Appellants

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

J. Harold Call; Attorney for Appellants;

Recommended Citation

Brief of Appellant, *Sizemore v. Jensen*, No. 8370 (Utah Supreme Court, 1955).
https://digitalcommons.law.byu.edu/uofu_sc1/2380

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

MAR 27 1956

LAW LIBRARY
of U.

Case No. 8370

IN THE SUPREME COURT

of the

FILED

STATE OF UTAH

AUG 30 1955

Clerk, Supreme Court, Utah

MAYBELL F. SIZEMORE, Widow of
WILLIAM L. SIZEMORE, deceased,
SARAH LUETTA PETERSON, Step-
child of deceased, and MICKEY SIZE-
MORE and CARMA SIZEMORE, minor
children of deceased,

Applicants and Appellants,

Case No. 8370

— vs. —

GEORGE NEWELL JENSEN, and THE
STATE INSURANCE FUND, and the
INDUSTRIAL COMMISSION OF UTAH,

Defendants and Respondents.

APPELLANTS' BRIEF

J HAROLD CALL

Attorney for Appellants

INDEX

	Page
ARGUMENT	2
CONCLUSION	4
STATEMENT OF FACTS	1
STATEMENT OF THE CASE	1

CASES CITED

Earley, et al., v. Industrial Commission, et al., 265 Pac. 2nd 390	3
McVicar v. Industrial Commission 56 Utah 342	3
Snowcroft & Sons Co. et al., v. Industrial Commission, et al., 70 Utah 116	4
Utah Fuel Company v. Industrial Commission of Utah, 64 Utah 328	2,3

STATUTES CITED

Section 35-1-73 UCA 1953	2,3
--------------------------------	-----

IN THE SUPREME COURT
of the
STATE OF UTAH

MAYBELL F. SIZEMORE, Widow of
WILLIAM L. SIZEMORE, deceased,
SARAH LUETTA PETERSON, Step-
child of deceased, and MICKEY SIZEMORE and CARMA SIZEMORE, minor
children of deceased,

Applicants and Appellants,

Case No. 8370

— VS. —

GEORGE NEWELL JENSEN, and THE
STATE INSURANCE FUND, and the
INDUSTRIAL COMMISSION OF UTAH,

Defendants and Respondents.

APPELLANTS' BRIEF

STATEMENT OF THE CASE

STATEMENT OF FACTS

Applicants and Appellants, Maybell F. Sizemore and Sarah Luetta Peterson accept as true the Statement of the Case and and the State of the Facts as appear in Appellants' Brief filed by C. Vernon Langlois for Mickey Sizemore and Carma Sizemore.

ARGUMENT

Applicants and appellants, Maybell F. Sizemore and Sarah Luetta Peterson accept the decision of the Commission as being just and equitable. The argument of Applicants and Appellants, Mickey Sizemore and Carma Sizemore are without merit and is answered as follows:

The Industrial Commission of Utah has power to apportion the benefits among the dependents and is not bound or obligated to distribute the benefits on an equal or pro rata basis. Section 35-1-73, Utah Code Annotated, 1953 reads:

35-1-73 — “The benefits in case of death shall be paid to such one or more of the dependents of of the decedent for the benefit of all the dependents, as may be determined by the commission, which may apportion the benefits among the dependents in such a manner as it deems just and equitable.”

A careful reading of the testimony before the Commission shows that Maybell F. Sizemore received \$30.00 per month from Social Security for Sarah Luetta Peterson and that is all the support money received from Social Security prior to the death of Mr. William Sizemore. The second Social Security payment was not paid to appellants until after the death of the deceased. (TR 18-20). Dependency is determined on conditions that exist at the time of death, not on prior or subsequent facts.

In *Utah Fuel Co. v. Industrial Commission*, 64 Utah, 328, it is said commencing at page 331:

“It is however, in our judgment, clearly de-

ducible from the weight of authority that the family relationship is a social status and not one necessarily founded upon contract; also that the individuals may be members of the same family without sustaining to each other any blood relationship. There must, however, be some legal or moral obligation for support existing between the individuals composing the family.”

Upon uncontradicted evidence the Commission has found that Sarah Luetta Peterson was a dependent of the deceased and that he contributed to her support. (TR 19).

This Court stated in the case of *McVicar v. Industrial Commission*, 56 Utah, 342 at page 344 that:

“The record is not without evidence to support the findings and conclusions of the commission. The issue of dependency being one of fact, the commission’s conclusions are like the verdict of a jury, and will not be interfered with by this court, when supported by some substantial evidence. If the commission erred in its findings of fact and conclusions, we cannot correct the error. It has the power to determine the degree of dependency.”

In the case of *Earley, et. al., v. Industrial Commission, et. al.*, 265 Pac. 2nd 390, this court held that when a parent dies who is legally bound to support his children, the said children are conclusively presumed to be dependent on said parent for support. However, this presumption does not entitle all dependents to an equal share of the benefits for Section 35-1-73 supra, provides that the Commission “may apportion the benefits among the dependents in such manner as it deems just and equitable. Payments to a dependent

subsequent in right may be made, if the commission deems it proper . . . ” The evidence is uncontroverted that dependents Carma Sizemore and Mickey Sizemore received but meger support from their father. In *Scowcroft & Sons Co., et. al., v. Industrial Commission, et al.*, 70 Utah 116 at page 123 this Court said:

“In other words, the spirit of the compensation act is that the dependent should be compensated for the actual loss sustained as nearly as that fact can be determined.”

In awarding a total of \$1,500.00 to Carma and Mickey Sizemore the Industrial Commission was being over generous.

CONCLUSION

The logical conclusion reached from the facts and law before the Court is that the Commission was correct in its findings of dependency and was right in the distribution of the benefits to the dependents and therefore the decision of the Commission should be affirmed.

Respectfully submitted,

J HAROLD CALL,

Attorney For Appellants