

1967

Margaret Ann Crain, on Behalf Of Roger Luke Crain And Jackie Sue Crain, Dependent Minor Children of Elmer Leroy Crain v. W. S. Hatch Company, The State Insurance Fund And The Industrial Commission Of Utah : Brief of Petitioner

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Recommended Citation

Brief of Appellant, *Crain v. W.S. Hatch Co.*, No. 11002 (1967).
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IN THE SUPREME COURT OF THE STATE OF UTAH

MARGARET ANN CRAIN, on behalf of
ROGER LUKE CRAIN and JACKIE SUE
CRAIN, Dependent Minor Children of
ELMER LEROY CRAIN,

Petitioner,

vs.

W. S. HATCH COMPANY,
THE STATE INSURANCE FUND and
THE INDUSTRIAL COMMISSION
OF UTAH,

Defendants.

Case
No.
11002

BRIEF OF PETITIONER

Writ of Review to The Industrial Commission
from Order Denying Petition for Payment of
Dependent's and Minor Children's Allowance

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FILED

DEC 8 - 1967

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BRIEF OF PETITIONER

STATEMENT OF THE NATURE OF THE CASE

Petitioner seeks a review of an order of the Industrial Commission entered on the 25th of July, 1967, denying the petition of Margaret Ann Crain for payment of dependent and minor children's allowance.

DISPOSITION IN INDUSTRIAL COMMISSION

The Industrial Commission denied petitioner's claim for payment of minor children's allowance to her and ordered that the allowance be held in trust.

RELIEF SOUGHT ON APPEAL

Petitioner seeks an order directing the Industrial Commission to order the payment of the monthly allowance in the amount of \$49.20 per week for the support of the two minor children.

STATEMENT OF FACTS

On the 13th day of October, 1966, Elmer LeRoy Crain died as a result of an industrial accident. (R. 16). He left surviving him two dependents whose names were Jackie Sue, a daughter born October 30, 1960, and Roger Luke, a son born December 21, 1961. (R. 1). These minor children were in the custody of their mother, Margaret Ann Crain, petitioner, who resides at 2737 Downs Way, Salt Lake City, Utah (R. 4).

Mrs. Crain was the divorced wife of the deceased, Elmer LeRoy Crain, and in said Decree was awarded the sole care, custody and control of the minor children. She was granted a judgment against Elmer LeRoy Crain requiring him to pay for the

support of the minor children the sum of \$50.00 per month per child (R. 8).

The Industrial Commission, in its Findings of Fact and Conclusions of Law and Award, determined that the dependent minor children were entitled to workman's compensation benefits as provided by law (R. 21), and awarded them the sum of \$49.20 per week, beginning October 8, 1966, until a total of \$15,350.40 had been paid (R. 22).

The Commission ordered that the funds of Jackie Sue Crain and Roger Luke Crain be paid to the Trust Department of Continental Bank and Trust Company and ordered that no expenditure of the trust assets or withdrawal may be made without prior written approval of the Commission (R. 22).

Informal inquiry was made as to why the money was not paid to Mrs. Crain for the support of the minor children, and on April 27, 1967 counsel for Mrs. Crain was advised that the Commission was exercising its discretion in placing the funds in a trust fund without a Trust Agreement, and advised counsel that a formal application should be made for hearing (R. 23).

Petitioner petitioned for payment to her of the amounts for the two minor children (R. 26-27-28).

Following the petition for payment, the Commission referred the matter to the Salt Lake County

Department of Public Welfare on June 2, 1967 (R. 28A-29). The Department of Public Welfare investigated the matter and filed its report (R. 31-32-33) in which it made the following recommendations. "I am certain that the additional income of \$210.00 would make life somewhat easier for Mrs. Crain and the children and that if each child had equal income going for their support, that it might prevent family arguments at a later date."

The file further revealed that Mrs. Crain has a daughter by a marriage prior to her marriage to Crain, and that this daughter, Tina Ann Barrett, receives for her support \$200.00 per month from a trust fund at the Tracy-Collins Trust Company (R. 31).

Record also reveals that Mrs. Crain has been advised that veteran's benefits were not available to her for the Crain children (R. 34), and that the amount available from Social Security for the support of the two children is approximately \$101.00 per month per child (R. 27).

The income available to Mrs. Crain and the three minor children amounts to \$500.00 per month, \$200.00 of which comes from the Barrett trust and \$202.00 comes from Social Security. Apparently Mrs. Crain's income from other sources amounts to somewhere around \$98.00 per month.

There was no evidence presented contrary to the recommendation of the Department of Public Welfare that this money would be helpful to the Crain family.

It is the contention of the petitioner that the refusal to pay the money to Mrs. Crain for the support of the two minor children is arbitrary, capricious, unlawful and without any justification.

ARGUMENT

POINT I

THE INDUSTRIAL COMMISSION HAS ARBITRARILY, CAPRICIOUSLY AND WITHOUT RIGHT WITHHELD FROM PETITIONER THE SUPPORT PAYMENTS FOR HER TWO MINOR CHILDREN.

The Industrial Commission relies for its right to withhold payments on Section 35-1-73, U.C.A. 1953. It permits the Industrial Commission to apportion the benefits provided by the Workman's Compensation Act among dependents in the manner it deems just and equitable. Petitioner can find no authorization to the Commission to completely withhold the money provided for the support of the dependent child. This is the basis of petitioner's claim, that the Commission acts arbitrarily, capriciously, unlawfully and unreasonably in refusing to permit the payments to

Mrs. Crain of the allowance for the support of the two dependent children. The statute itself provides:

“It shall be sufficient for the widow to make application to the commission on behalf*** minor children; and in cases where all of the dependents are minors, the application shall be made by the guardian or next friend of such minor dependents.”

If the Commission is permitted to withhold the support money for dependent children, it places in the Commission's hands the right to fix the standard of living that a dependent child can enjoy.

This Court has, on numerous occasions, had before it the interpretation of Section 35-1-73 and at no time has it ever indicated that the Industrial Commission has the power which it seeks to exercise in this case. See *New Park Mining Co. v. Industrial Comm.*, 2. U. (2d) 202, 271 P. 2d 842. This case concerned a claim by the insurance carrier that the Industrial Commission should terminate dependent child benefits when the child reached 18 years of age. The court, in affirming the refusal of the Industrial Commission to terminate the allowance, held that once a determination has been made in accordance with the statute that a child is a dependent and an award based on his rights as a dependent of a deceased employee become fixed, that no circumstances thereafter may affect that right and payments cannot be

terminated. An extension of the rationale of the *New Park* case would seem to logically require payments of the dependent's allowance where all of the other circumstances are present, whether an actual need for food, clothing or shelter could be demonstrated. In *Sizemore v. Industrial Comm.*, 4 U. (2d) 126, 288 P. 2d 788, the Industrial Commission had ordered a distribution of benefits to the surviving wife and her child who was not the natural child of the deceased and made a very small award to two children who were the natural children of the deceased. The order of the Industrial Commission was attacked by the natural children who were being supported by their stepfather. The court examined the circumstances and affirmed the Industrial Commission ruling, finding that a substantially disproportionate allowance to the wife and her daughter, stepdaughter of the deceased, was not capricious, arbitrary and unreasonable, and therefore should be affirmed.

One early case in which the court affirmed an order where the payment was to a trustee is *Utah Fuel Co. v. Industrial Comm.*, 65 U. 100, 234 P. 697. In this case an illegitimate child born after the death of its father, the employee, was granted dependent status and an award made which was paid to Tracy-Collins Bank and Trust Company. The insurance carrier for the employer questioned the propriety of the award and the payment, although it does not appear

that there was any question about the natural guardian or next friend of the illegitimate child beneficiary being entitled to payment. This court affirmed the award to the trustee for the benefit of the illegitimate child.

A case not directly in point but the rationale of which petitioner feels is helpful in her claim, is *Davis v. Industrial Comm.*, 109 U. 87, 164 P. 2d 740. In this case an award had been made to a mother and children of the deceased employee. The mother now desires to remove herself from the United States and return to Argentina. The insurance carrier seeks to terminate her part of the award for support, she being an alien. In affirming the Industrial Commission's refusal to deny the mother her share of the award, the court emphasized that these awards are made to a family unit, preferably, and no fractional rights are created. Therefore the Industrial Commission was correct in refusing to deduct from the lump sum award a sum which was allocated to the alien mother about to depart for Argentina. It is submitted that the same situation exists here and that the Industrial Commission, by refusing to recognize the needs of this family unit where two dependents reside and where their daily necessities are provided and cultural advantages, if any, are to be made available, has acted in an arbitrary, unreasonable and capricious manner and without any legal authority for so ordering.

The total income to Mrs. Crain and the three minor children is approximately \$500.00 per month. This is sufficient to meet the basic necessities of the family. It places on Tina's trust income, however, a disproportionate burden for the support of the family.

Inherent in the Department of Public Welfare's recommendation is a recognition that this is not fair to Tina and could give rise to additional family problems in the future. Their recommendation, it is submitted, is sound and reasonable. Mrs. Crain should be able to fairly adjust and apportion the living costs of the family among the contributing dependent children's allowances and provide the best possible standard of living within the fund available for their support.

A basic criticism of the Industrial Commission's order seems to petitioner to be that this Commission has taken upon itself the authority to fix the standard of living for the family at a level below what is necessary. By withholding this money which is rightfully designated as support for dependent children, the Commission is ruling that the standard of living for the Crain family must be that which \$500.00 per month will provide. This is arbitrary and unreasonable.

Whether or not the family has a standard of living provided by the sum of \$500.00 or \$700.00 a month, it is respectfully submitted is not something

that the Industrial Commission of the State of Utah should be permitted to determine. The mother of the three children should be free to determine how much is actually used for the support of the children and what kinds of cultural or other advantages available in our society should be purchased for the benefit of these children. The Industrial Commission should not and is not granted this power. To permit it to put a ceiling on and determine the upper limits of the standard of living for this family is contrary to every tenet that the people of a democracy subscribe to.

These children, who are now ages 6 and 7, and their sister Tina who is age 11, may be greatly benefited during their growing and developing years by having additional funds available to purchase cultural advantages, better clothing, recreational activity and training. Providing an environment better than average would be much more beneficial than a lump sum payment to the children when they arrive at their majority.

No evidence of any need for withholding this money was presented to the Commission. Their order refusing to permit the use of the money for the support of the children at this time is not based on any evidence, legal principle or statutory authorization and is unreasonable, capricious, arbitrary and contrary to the laws of the State of Utah.

CONCLUSIONS

It is respectfully submitted that the Industrial Commission has exceeded its authority and has acted unreasonably, arbitrarily, capriciously and contrary to its lawful authority, that this Court should order the Commission to pay to the mother and natural guardian to whom the care, custody and control of the minor children has been awarded, the sums available for the support of Jackie Sue Crain and Roger Luke Crain, namely \$49.20 per week, until such time as the \$15,350.40 has been used for their support.

RESPECTFULLY SUBMITTED this day
of, 1967.

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