

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
APPELLATE PANEL

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W.C.C. File No. 0725187  
Appellate Tracking No. 2012-211392

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George W. Thomas, Employee, .....Respondent,

v.

5 Star Transportation, Employer, and S.C. Uninsured Employers  
Fund, Carrier,

Of whom 5 Star Transportation is the .....Appellant.

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INITIAL REPLY BRIEF OF APPELLANT

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SEP 30 2013  
SC Court of Appeals

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## ARGUMENT

### I. THE REPUDIATION OF THE PUTATIVE MARRIAGE DOCTRINE BY THE SOUTH CAROLINA SUPREME COURT REQUIRES REVERSAL.

The dispositive issue in this case - whether South Carolina recognizes the putative marriage doctrine - has been decided in the negative by the South Carolina Supreme Court in *Hill v. Bell*, Op. No. 27308 (S.C.Sup.Ct. filed Aug. 28, 2013) (Shearouse Adv.Sh. No. 38 at 109). In light of the court's holding on this issue, it is clear that Respondent Emily Thomas ("Thomas"), proceeding as the putative spouse of Decedent George Thomas, lacks standing to pursue this action, that it was improper for the South Carolina Workers' Compensation Commission to enter a Decision and Order awarding benefits to her, and that this action should be dismissed.

In *Hill*, the South Carolina Supreme Court considered and answered the following question from the United States Court of Appeals for the Third Circuit: "Does South Carolina recognize the 'putative spouse' or 'putative marriage' doctrine (hereinafter, putative spouse doctrine)? We answer the certified question, 'no.'" *Hill*, Op. No. 27308 (Shearouse Adv.Sh. No. 38 at 110) The facts of *Hill* are straightforward. The decedent and Hill were married in 1979 and separated in 1983; however, they never divorced. *Id.* In 1986, decedent purported to marry another woman, Barbara Sullivan ("Barbara"), in South Carolina. *Id.* The record in the case also established that decedent and Barbara obtained a marriage license and that she was unaware of decedent's prior marriage. *Id.* At issue following decedent's death, then, were competing claims to retirement benefits to the "surviving spouse" of a deceased professional athlete pursuant to a plan that defined "surviving spouse" as "a [p]layer's lawful spouse, as recognized under applicable state law." *Id.*

Following removal to the Eastern District of Pennsylvania, the court determined that decedent's purported marriage to Barbara was void pursuant to South Carolina law inasmuch as decedent and Hill never obtained a divorce. *Hill*, Op. No. 27308 (Shearhouse Adv.Sh. No. 38 at 111) Barbara appealed to the United States Court of Appeals for the Third Circuit, arguing she should "receive the same rights conferred upon a legal spouse under the putative spouse doctrine because she lived with [decedent] with the good faith belief they were married." *Id.* Not surprisingly, Hill urged she was entitled to all retirement benefits as she and decedent never divorced and because South Carolina does not recognize the putative spouse doctrine. *Id.*

Answering the certified question, the supreme court noted that this State has never adopted the putative spouse doctrine. *Hill*, Op. No. 27308 (Shearhouse Adv.Sh. No. 38 at 112), citing *Lovett v. Lovett*, 329 S.C. 426, 432, 494 S.E.2d 823, 826 (Ct. App. 1997). Going further, the court refused "to adopt the putative spouse doctrine, as it is contrary to South Carolina's statutory law and marital jurisprudence." *Id.*, citing S.C. Code Ann. § 20-1-80 (Supp. 2012) ("All marriages contracted while either of the parties has a former wife or husband living shall be void."); *Lukich v. Lukich*, 368 S.C. 47, 56, 627 S.E.2d 754, 758 (Ct. App. 2006) ("Even if Wife was acting under a good faith belief, South Carolina will not recognize her bigamous second marriage because to do so would violate public policy."); *Day v. Day*, 216 S.C. 334, 338, 58 S.E.2d 83, 85 (1950) ("A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, is not a marriage at all. Such a marriage is absolutely void, and not merely voidable."); *Howell v. Littlefield*, 211 S.C. 462, 466, 46 S.E.2d 47, 48 (1947) ("[Husband's] existing marriage in North Carolina incapacitated him . . . to contract

another marriage . . .”).

Thus, the South Carolina Supreme Court has rejected the putative spouse doctrine in the strongest possible terms. It necessarily follows, then, that this Court must reject Thomas’s contention that she entered into a valid marriage with the decedent or that her illicit union somehow ripened into a valid marriage once the impediment of decedent’s prior union was removed. This is true *even if* one party has a “good faith belief” that her marriage to the bigamous party is valid. As has been noted previously, Thomas was “completely unaware” that decedent was already married at the time of their wedding and only became aware of the actual date of his divorce after his death. (December 18, 2008 Hr’g Trans., p. 21, lines 4-10) It was, therefore, impossible for Thomas to agree to enter into a common law marriage once the impediment was removed. *Prevatte v. Prevatte*, 297 S.C. 345, 349, 377 S.E.2d 114, 117 (Ct. App. 1989) (recognizing that an illicit union may be transformed into a valid common law union provided “the parties . . . agree to enter into a common law marriage *after* the impediment is removed.”) (emphasis added).

The South Carolina Legislature has expressly refused to recognize bigamous marriages, and the South Carolina Supreme Court has now flatly rejected the putative spouse doctrine upon which Thomas and the Commission relied upon so heavily. Because Thomas and decedent never married in the eyes of the law, it was error for the Commission to enter an order entitling her to benefits as a surviving spouse. Indeed, Thomas lacked standing even to make that claim. As such, and for all of these reasons, Appellant respectfully submits that it is entitled to an Order from this Court reversing the Commission’s May 3, 2011 Decision and Order affirming the award of benefits and remanding this matter to the Commission with instructions that this matter be dismissed

with prejudice.

**II. THE INJURIES SUSTAINED BY RESPONDENT'S DECEDENT DID NOT ARISE OUT OF AND IN THE COURSE AND SCOPE OF HIS EMPLOYMENT.**

Thomas asserts that Appellant's argument - that the Commission erred in determining that her Decedent's injuries arose out of and in the course and scope of his employment - "is based on the premise the Decedent died as a result of a ruptured aneurism." (Resp't's Initial Br., p. 7) This is not so. Rather, Appellant asserts that the Decedent's ruptured aneurism and the events that followed, were not related to the conditions of his employment. Neither are they compensable because of an alleged "increased danger" associated with the Decedent's employment as a bus driver. Because Thomas cannot meet her burden of establishing Decedent's rupture of the saccular aneurysm, and therefore the accident, arose out of the conditions of his employment, it was error for the Commission to affirm the award of benefits.

Appellant does not dispute that Decedent sustained a ruptured aneurysm, which is clear from the report of the medical examiner. (Schandel Dep., p. 6, line 21 - p. 7, line 6) At the same time, however, Dr. Schandel cannot state to any reasonable degree of medical certainty that the aneurysm resulted from a degenerative process or congenital defect unrelated to Decedent's employment versus a condition of the employment itself. Indeed, Dr. Schandel confirmed Decedent's aneurysm was a condition in existence prior to the time of the accident, that she found no indication that it was caused by trauma, and that he was observed slumping over prior to the collision. (*Id.*, p. 6, lines 13-19; p. 8, lines 19-22) Most critically, Dr. Schandel, the only medical professional to testify in this matter, was unable to testify with any certainty about what caused the aneurism to

rupture. (*Id.*, p. 8, lines 1-3) Inasmuch as she was not able to testify within a reasonable medical certainty as to causation as required by S.C. Code Ann. § 42-1-160(E), it was error to for the Commission to conclude the Decedent sustained a compensable injury.

This Court's recent decision in *Nicholson v. South Carolina Department of Social Services*, Op. No. 5171 (S.C.Ct.App. filed Sept. 4, 2013) (Shearouse Adv.Sh. No. 39 at 72), is instructive on the "arising out of" analysis. Specifically, the Court's discussion of *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 88 S.E.2d 611 (1955), makes clear that benefits should be denied where the cause of the injury is unrelated to the employment even when mechanism of injury (a fall onto a hard cement floor) contributed to the effect of the fall. *Id.* (Shearouse Adv.Sh. 39 at 78). Stated differently, should compensation be awarded "when the cause of the fall was unrelated to the employment but the cement floors contributed to the effect of the fall"? The supreme court's answer to that question in *Bagwell* was no. Likewise, the *Nicholson* Court declined to adopt the "increased risk" doctrine, opting instead to focus its analysis on whether "a causal connection . . . exist[s] between the conditions under which the work is required to be performed and the resulting injury." *Id.* (Shearouse Adv.Sh. 39 at 81) (quoting *Ervin v. Richland Mem'l Hosp.*, 386 S.C. 245, 249, 687 S.E.2d 337, 339 (Ct. App. 2009).

Here, there is no dispute as to the critical operative facts. Thomas's Decedent suffered a pre-collision ruptured aneurysm, he veered off of the roadway, and sustained life ending injuries resulting from the collision. Just as in *Bagwell*, the cause of the rupture, Decedent's slumping into his seat, and the setting the unfortunate events that followed into motion are unexplained. Indeed, the only medical professional to testify in this case could not explain why the aneurysm ruptured or establish the required link

between the medical condition and the conditions of Decedent's employment as a bus driver. In keeping with the holding of *Bagwell*, this Court should reject Thomas's contention that driving a bus along an interstate highway is a special condition that would afford compensation benefits to a claimant who sustains an otherwise unexplained condition that bears no relationship to the nature of his employment.


In the absence of medical evidence supporting a connection between the conditions of Decedent's employment (driving a bus) and the condition (a ruptured aneurysm), it was error for the Commission to affirm an award of benefits. As such, the award should be reversed on this basis.

## CONCLUSION

For all of the reasons stated herein, Appellant 5 Star Transportation respectfully submits that the Commission erred in determining that Thomas' Decedent sustained a compensable injury and that she is entitled to benefits pursuant to the Act, and that it is entitled to an order reversing the Commission's Decision and Order.

September 30, 2013

By:



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Of whom 5 Star Transportation is the.....Appellant.

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PROOF OF SERVICE

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I certify this 30th day of September 2013 that I have served a copy of the Initial  
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SEP 30 2013

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September 30, 2013

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